

The
Bengal Tenancy Act.

No - 8

1885



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THE BENGAL TENANCY ACT.
ACT VIII OF 1885 (AS AMENDED BY ACT VII OF 1886).

NOTICE OF 1877
 introduced and read in the Council of the
 Lieutenant-Governor of Bengal at a meeting
 held for the purpose of making laws & Regulations
 on the 3rd April 1877. This Bill was published
 in the Cal. Gaz. of the 7th April. 1877.
 A Bill to amend sections 30, 31, 39, 52 and
 119 and Chapter X of the Bengal Tenancy Act.
 1885

CONTENTS OF THE BENGAL TENANCY ACT.

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Act X 1859	Act VIII 1869 B.O.	Act VIII 1855.	Act X 1859.	Act VIII 1869 B. C.	Act VIII 1855.	Act X 1859.	Act VIII 1869 B. C.	Act VIII 1855.
1	153	3	28	omitted (24)	omitted	nil	57	omitted
2	50 (1)	50 (1)	29	27	omitted	82-91	58	Sch. III (2b)
3	50 (2)	50 (2)	30	28	Sch. III (1) & (3)	92	59	omitted
4	51, 35	51, 35	31	29	Sch. III (2b)	93-104	60	162-165
5	27	27	32	30	Sch. III (2a)	105	61	171, 172
...	20, 21	20, 21	33	31	omitted	106	62	170
7	omitted	omitted	34-68	32	omitted	107	63	omitted
8	42	42	nil	33	143, 148	108 & 109	64	omitted
9	158	158	69	34	Sch. III (2a)	112-113 & 115	65	omitted
10	56, 58, 75	56, 58, 75	nil	35 & 36	145, 187	112-113 & 115	68, 69, 71	131, 141
11	omitted	omitted	69	36	145, 187	114	70	188
12	"	"	nil	37	145	116	72	125
13	"	"	nil	38-40	145	117	73	omitted
14	50 (1)	50 (1)	nil	41	91	118	74	126
15	50 (2)	50 (2)	nil	42	103-109	119	75	omitted
16	31-34	31-34	nil	43	92	121	77	136
17	38, 52 (6)	38, 52 (6)	nil	44, 45	92	122	78	omitted
18	36	36	nil	46	145 (b)	123	79	122
19	53, 54, 67	53, 54, 67	nil	47	145 (b)	124	80	125, 124, 127
20	178 (3) (h)	178 (3) (h)	...	...	61, 62	125-128	81-85	omitted
...	44 (a)	44 (a)	70-75	omitted	63, 64	129, 130	86-87	128, 130
21 & 23	65 (1)	65 (1)	76	(9)	66	131	88	132
...	65	65	77	omitted	omitted	132	89	134
...	144, 157	144, 157	78	omitted	omitted	133	90	135
23	153, 193	153, 193	79	48-51	omitted	134-138	91-95	omitted
24-25	omitted	omitted	80	52	omitted	139-142	96-98	140
(25)	omitted	omitted	81	53 & 54	66	143	99	omitted
26	90	90	81	55	omitted	144	100	omitted
					omitted	145	101	omitted
					omitted	146-168	102	153
					omitted	146-168	103-106	omitted
					omitted	146-168	106	omitted
					omitted	146-168		1-5

THE BENGAL TENANCY ACT, 1885.

BEING

ACT. No. VIII OF 1885.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of His Excellency the Governor-General on the 14th March, 1885.)

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

The original bill which was introduced by Sir Richard Temple in the Bengal

History of the Act.

Council in August, 1876, was "to provide for the more speedy realisation of arcars of rent."* The Lieutenant-Governor, it is said, in view of the loud and constant complaints put forward by the zemindars as to the difficulty under the present law of collecting even undisputed rents, is anxious to provide them at an early date with a reasonably summary procedure, to enable them to overcome the passive resistance of their raiyats, provided that the raiyats' tenure was at the same time so protected and strengthened as to obviate any fear of their being made to suffer unduly in the process. It was found, however, impossible to frame a procedure which shall be perfectly fair to both parties, and yet afford such special facilities to the zemindar as he seeks to secure. The bill was referred to the Supreme Council, but subsequently on the 21st December, 1878, a bill on the same scope was introduced into the Bengal Council, and on the 22nd February, 1879, referred to a Select Committee.† The Select Committee of Council appointed to report on the bill urged in paragraph 14 of their report the propriety of taking up the revision of the Rent Law of Bengal in a much more comprehensive manner than was contemplated at first by the Bengal Government. Sir Ashley Eden, therefore, in his No. 832-337L.R. of the 3rd April 1879, proposed to appoint a Special Commission who would (1) "prepare a careful analysis and digest of the existing statutory and case laws; (2) consider the suggestions for amendment that have been put forward of late years; and (3) prepare a draft bill embodying such

* See the Administration Report of Bengal, 1876-77, p. 11, quoted in the Introduction, ante.

† See the Administration Report of Bengal, 1877-78 and 1878-79, pp. 7, 33-39 respectively, quoted in the Introduction, ante.

additions to the substantive law, and such improvements in the law of procedure, as may commend themselves to their judgment." The Commission submitted their report with their draft bill on the 19th June 1880. This bill is known as the Commission Bill. Considerable difference of opinion prevailed, especially with regard to the changes made in the substantive law by this bill and Sir Ashley Eden found it necessary to place Mr. Reynolds, a Secretary to the Bengal Government, and a Member of the Legislative Council of the Governor-General, on special duty, in connection with the revision of the Rent Law, with instructions to visit the important local centres, and there to confer with leading official and non-official persons on the subject of the bill, to receive and consider, in communication with the Bengal Government, all the various reports and recommendations that might come to hand, and to prepare a measure embodying the ultimate views of the Local Government. Mr. Reynolds submitted his Memorandum on the rent bill on the 18th May 1881, and prepared a revised bill which was settled by Sir Ashley Eden, and is known as the Bengal Bill. This third draft, with all necessary papers, were submitted to Her Majesty's Secretary of State for India by the Government of India on the 21st March 1882, but the former (Lord Hartington) disapproved the measure on many material points in his Despatch of the 17th August 1882, to which an answer was sent by the Government of India on the 17th October 1882. The Secretary of State, by a telegram of the 15th December 1882, adhered to his opinion, but granted sanction to the introduction of the measure in the Legislative Council. The Government of India, therefore, by a telegram, dated the 22nd December 1882, promised to recast the bill in accordance with the general views expressed by Lord Hartington, and to introduce the bill into the Viceroy's Council. Thus was the bill translated from the Bengal into the India Council. There also we had three bills, known as the Bengal Tenancy Bills. Bill No. I was submitted by the Select Committee with their report on the 2nd March 1883, Bill No. II on the 14th March 1884, and Bill No. III on the 12th February 1885, which passed into an Act on the 14th March 1885.

Act X of 1859, which was the first Act passed expressly to settle the relation of landlord and tenant, was described as "an Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal," and Act VIII of 1869 (B.C.) was simply "an Act to amend the procedure in suits between landlords and tenants."

Old Acts.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the law of landlord and tenant within the territories under the administration of the Lieutenant-Governor of Bengal: It is hereby enacted as follows:—

Preamble.

The preamble of Act X of 1859 ran thus: "Whereas it is expedient to re-enact with certain modifications the provisions of the existing law relative to the rights of raiyats with respect to the delivery of pottas and the occupancy of land, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same, to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears, and to amend the law relating to distraint; it is enacted as follows." Act VIII of 1869 (B.C.) had: "Whereas it is expedient to amend the procedure in suits be-

Old Acts.

tween landlords and tenants in the provinces subject to the Lieutenant-Governor of Bengal; it is enacted as follows."

Act X of 1859 was the first Act passed by the Government to redeem the pledge that was given to the raiyats by the Proclamation of the Permanent Settlement (see the Introduction, *ante*).

Object of the Act.

That Act was therefore both an amending and consolidating Act, while Act VIII of 1869 (B. C.) was simply a re-enactment of Act X of 1859 with the procedure sections struck off. The object of Act X of 1859 was to re-enact the provisions of the existing laws relative to the rights of raiyats, and not in any way to destroy them. If, therefore, a person had a goraundi tenure before the passing of that enactment, the enactment of that Act in no wise deprived him of his rights—*per Kemp, J.*, in (*Rajah Leelanund v. Nirput*, 17, W. R., 306.) The present Act purports to be more extensive, and in the words of the Governor-General, the bill upon which it was developed was a "bill for the restoration rather than for the redistribution of property." The Select Committee, however, in para. 9 of their report on Bill No. 1, observed: "Before proceeding to give explanations usual in a statement of this description, it should be mentioned first that these explanations will, as far as possible, be confined to points on which it is proposed to alter the existing law; and, secondly, that the Bill is no more than it purports to be, namely, a bill to amend and consolidate existing enactments." Though, however, the Act purports to amend and consolidate certain enactments relating to the law of landlord and tenant only, it provides also for certain cases in which the relationship of landlord and tenant is impeached, or does not exist,—see section 157. Some of the provisions go beyond the existing law.—See Chapter IX, Improvements.

Application of the Act only to landlord and tenant.

Mainly, however, the Act should be considered as, only applying to suits between landlords and tenants. The Court must, therefore, in a disputed case determine judicially the fact of the existence or the non-existence of the relations of landlord and tenant, before it can decide whether it has jurisdiction under the Act or not. (*Hurce Persad v. Koonjo Behari*, Marsh., 99; W. R., F. B., 29; 1 Hay, 238; *Madhu Dass v. Shali Babu Bonowari Lal*, 2 Board's Rep., 92; *Syed Jeshan Hossein v. Baker*, 3 W. R., Act X, 3; *Bharut Chunder v. Oseemuddin*, 6 W. R., Act X, 56; *Rameswar v. Messrs. R. Watson and Co.*, 7 W. R., 2; *Mohunt v. Jalka v. Kailas Chunder*, 10 W. R., 407; *Chundernath v. Assanoollah*, 10 W. R., 438; *Doyal Chand v. Nabin Chunder*, 8 B. L. R., 180; *Ramguttay v. Gourish Chunder*, 17 W. R., 14; *Ram Kristo v. Sheik Harain*, 1 L. R., 9 Cal. 517; 12 C. L. R., 141. See also 2 C. L. R., 302.) Compare, however, the effect of sections 157 and 158 of the Act upon these decisions.

"*Certain enactments.*"—This Act does not purport to be an exhaustive codification of the law of landlord and tenant. For special enactments not affected by this Act, see section 195 which saves *patni* and other laws. For enactments amended and consolidated by this Act, see Schedule I.

"*Relating to the law of landlord and tenant.*"—As observed above, the application of this Act is mainly where the relation of landlord and tenant exists between the parties:

Mr. Field observes in his Digest, Article 4, Chapter I, Part I:

"The relation of landlord and tenant subsists (A) where it has been created by a contract valid according to the law in force at the time of executing such Contract: (B) where it is reasonably implied from the acts of the parties: (C) where it has been created or continued by the operation of law," (we may add) or by change of parties. We shall follow these orders in discussing the relation of landlord and tenant; and shall also discuss how the relation terminates.

Competence of the parties, freedom of assent, lawfulness of the consideration, and lawfulness of object are the four points which render an agreement to be a contract. Section 10 of the Indian Contract Act provides: "All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void. Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses or any law relating to the registration of documents."

Competence of Parties.—Section 11 of the Indian Contract Act provides: "Every person is competent to contract (1) who is of the age of majority according to the law to which he is subject, and (2) who is of sound mind, and is not disqualified from contracting by any law to which he is subject," (we may add) provided (3) that the contracting party do not act in excess of his own interest.

(1.) *Minority.*—For all persons domiciled in British India, Act IX of 1875 prescribes that the period of minority shall last until the completion of the 18th year, unless the minors have guardians appointed for them by a Court, or are brought under the charge of the Court of Wards,—in which case they will attain majority upon the completion of the 21st year. Of course if the minor contracts through his lawful guardian acting for his interest, the contract would be valid. But if he acts himself, will his contract be voidable or void? Mr. Field in a note to his Digest observes: "Under the Indian Contract Act, contracts made by minors are absolutely void, not voidable merely. Under the English law, a lease made by a minor lessor is voidable by him on his coming of age but not before, or by his heir if he die under age: it cannot be avoided by the lessee (Woodfall, 35, Smith, 61, 62). So a lease to a minor lessee (unless it be for necessary lodging), may be avoided by him within a reasonable time after coming of age, but is not absolutely void (Woodfall, 66. Smith, 69-71; Fawcett, 5)." Sir Richard Garth, C. J. seems to dissent from this opinion. He asks,

"1stly.—Are contracts made by a minor, notwithstanding section 11 of the Contract Act, absolutely void or voidable only at the minor's option? I should say they are or ought to be only voidable.

"Could a lessee, for instance, having taken a lease from a minor and having entered into possession and had the benefit of two lucrative seasons, throw the lease up afterwards whenever it suited his purpose? or could the lessee after having taken possession avoid such lease at all?

"2ndly.—Could the minor avoid the lease before he came of age, whether the lessee could avoid it or not?

"3rdly.—Could not a minor lessee avoid a lease for the future, even for necessary lodging? Is he ever liable for necessities which have not actually been supplied?

"As for example, suppose he were to enter into a contract for a supply to him of so many loaves a day for a month, would the contract be binding on him except so far as he had enjoyed the benefit of it? I think not. I consider that the same principle applies to a contract for future lodging. *Hands v. Slaney*, 8, Term Reports, 571, which is the case referred to by Woodfall, was an action for use and occupation. No doubt a minor would be liable for that. The just and proper rule would seem to be that leases both to and by minors should be voidable only at their option." (R. C. R. II. p. 357).

(2) *Of sound mind.*—"A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understand-

ing it and of forming a rational judgment as to its effect upon his interests" (S. 12 of the Indian Contract Act).

(3) *Acting in excess of interest.*—See section 194 of this Act. Mr. Field thus sums up the law on this point by article 6 of his Digest: "No person having a limited interest in land is competent to grant a lease which shall be valid for any purpose or period in excess of his own interest. A lease of the minor's interest and of something in excess is void as to the excess merely and is valid to the extent of the lessor's interest. (Reg. XVIII of 1812, s. 2; Woodfall.)" This article has been taken from (1) Musst. Mohan Koer v. Zoramun, Marsh. 166, which held that a Hindu widow can grant a lease for her life only, (2) Dumri v. Bissessur Lal, 15 W. R., 291, which ruled that an occupancy raiyat can create a mokarni lease to the extent of his own interest and (3) Harish Chunder v. Srikali, 22 W. R. 274, which laid down that a lessee cannot make an underlease for a longer term than his own lease. There are two provisos to this article, e.g. (A) Provided that, if the lessor acquire such excess after the execution of the lease, such lease is valid as against him for such excess also (Evidence Act, S. 115; W. P. R., 165; 1 N. W. P. Rep., 103; 20 W. R., 292). Provided that the following leases are valid (article 7):

1—a lease or farm exceeding ten years or beyond the period of expiration of the ward's minority, given by the Court of Wards under the sanction of the Board of Revenue (Act IV B. C. of 1870, s. 9).

2—a lease given without such sanction by the Court of Wards or by the Collector acting for the Court or by the manager appointed by the Court for a term not exceeding ten years nor beyond the period of expiration of the ward's minority: provided that any such lease shall become null and void on the removal of the ward's estate from the superintendence of the Court of Wards for any cause whatever. (Act IV (B.C.) of 1870, s. 9.)

3—leases for a period exceeding five years made with an order of the Civil Court previously obtained and leases for a period not exceeding five years made with or without such an order by the manager of the estate of a lunatic. (Act XXV of 1858, section 14.)

4—leases for a period exceeding five years, made with an order of the Civil Court previously obtained, and leases for a period not exceeding five years made with or without such an order by the manager of the estate of a minor. (Act XL of 1858, section 18.)

5—leases of ghatwali lands in the district of Birbhum for periods extending beyond the lifetime or incumbency of the grantors and granted for the working of mines or for the clearing of jungle or for the erection of dwelling-houses or manufactories, or for tanks, canals and similar works, subject to this condition that every such lease be approved by the Commissioner of the Division by an endorsement on the lease under his signature. (Act V of 1859, s. 1, proviso.)

Freedom of assent.—"Consent is said to be free when it is not caused by

- (1) coercion as defined in s. 15, or
- (2) undue influence as defined in s. 16, or
- (3) fraud as defined in s. 17, or
- (4) misrepresentation, as defined in s. 18, or
- (5) a mistake, subject to ss. 20, 21 and 22.

Consent is said to be caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake." (s. 14 of the Indian Contract Act.)

Lawfulness of the consideration or object.—"The consideration or object of an agreement is lawful, unless, it is forbidden by law, or

* is of such nature that, if permitted, it would defeat the provisions of any law, or
 is fraudulent, or
 involves or implies injury to the person, or
 property of another, or
 the Court regards it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void." (s. 23 Indian Contract Act).

The Contract need not be in writing.—It is not necessary to the validity of a contract creating the relation of landlord and tenant that such contract should be in writing, but where it has been reduced to writing, registration is necessary where the law requires it.

Nityanund v. Kishen Kishore, Sp. W. R., Act X, 82, is an extreme case where such relationship has been inferred: "We think," (B). *Where the relation of landlord and tenant is reasonably implied by acts or conduct of the parties.* observes Steer, J., in this case, "that though by the law of landlord and tenant, as applied in England, a person who takes and cultivates the lands of another (there being no express permission to cultivate on the side of the landlord, nor any express condition to pay rent on the part of the cultivator) would not be allowed to be regarded as a tenant, but treated as a mere trespasser, the peculiar circumstances of this country preclude the applicability of the technical doctrine of the English law of landlord and tenant to such a case. Here it is a very usual for a man to squat on a piece of land, or to take into cultivation an unoccupied or waste piece of land. Tenancy, in a great many districts in Bengal, commences in this way, and where it does so commence, it is presumed that the cultivator cultivates by the permission of the landlord, and is under obligation to his landlord to pay him a fair rent, when the latter may choose to demand it. Thus, the established usage of the country regards these parties as landlord and tenant, and unless the landlord chooses thus to treat him, the cultivator is not regarded, as he would be by the law as administered in England, as a trespasser but as a tenant, and he would be so, although he may never have expressly acknowledged the landlord's right, or entered into any express contract with him for the payment of rent. If he chooses to cultivate the zemindar's lands and the zemindar lets him, there is an implied contract between them creating a relationship of landlord and tenant. Therefore we think that, under the circumstances of the case, where the defendant avowedly holds and cultivates the plaintiff's lands, he is, by the universal custom of the country, the plaintiff's tenant, and while so holding and cultivating, is bound to pay him a fair rent, and to give him a kabuliya."

"So it has been held that parties in possession make themselves tenants by use and occupation, and may be sued for rent, even though not registered by the zemindar—(Ranee Lalán Mani v. Sonamani, 22 W. R., 334). A by permitting B to build a *hāt* on his land, impliedly admits him as his tenant, and can claim rent from him, but not a share of the profits—W. R., Sp., 165. A zemindar by taking the deposited rent of the plaintiff's purchased lands, admits his status as purchaser from former raiyats;—(Gudadhur v. Khetra Mohun, 7 W. R., 460). A landlord by taking rent from a party and suing him for arrears of his predecessor's rent, acknowledges him as his tenant—(Cazi Syed Mahomed Azmul v. Chundilal, 7 W. R., 250). A party in possession, and receiving from the occupant raiyat the entire rent payable for the land, has a right to claim rent from the raiyat as his personal tenant apart from any title to the property—(Bhyro Sing v. Rajah Lelanund, 21 W. R., 153).

Holding on after the lease.—A landowner who, after the expiration of a lease, continues to receive rent for a fresh period, and suffers the tenant to occupy, must be considered to have acquiesced in the tenant continuing to hold upon the terms of the original lease, i. e., as tenant from year to year, and cannot turn out the tenant or treat him as a trespasser, without giving him a reasonable notice to quit—(Ram Khelawan v. Musst. Soondra, 7 W. R., 152; Jumail Ali v. Chowdry Chutturdhare, 16 W. R., 185; C. G. D. Betts v. Jamie Sheikh, 23 W. R., 271; Sadhoo Jha v. Bhupawan Upadhyaya, 5 W. R., Act X, 17; Ooma Lochan v. Nitychand, 14 W. R., 467). But to justify a holding after the expiry of the lease, a direct consent on the part of the landlord is requisite; otherwise the tenant will be regarded as a trespasser and be liable to damages—(4 W. R., 4; Mr. M. H. Gale v. Maharani Sreemuty, 15 W. R., 133). A condition in a lease allowing a tenant to hold on after expiry, till a new arrangement is made, does not entitle the tenant to claim a fresh arrangement with the zemindar direct—(1 W. R., 250). A tenant, who holds over after the expiration of a lease, does so on the same rent and terms as before, until a fresh settlement is come to—(Sheik Enayutullah v. Sheik Elahcebuksh, Sp. W. R., Act X, 42; Tara Chandra v. Ameer Mundle, 22 W. R., 394). Where a tenant who has a lease for one year holds over after the expiry of his lease, and is not in the position of a trespasser, it must be presumed that he has continued to hold on the same terms as those on which he held in the first year of his term—(Srimati Altah Bibi v. Joogul Mundle, 25 W. R., 234; Sheo Sahai v. Bechan, 22 W. R., 31). If a tenant encroaches, the presumption is that he does so for the benefit of the landlord—(2 Hay's Reports, 560).

But a tenant's mere statement of willingness to pay rent is not sufficient to constitute the relation of landlord and tenant—(Messrs. T. Lyons and others v. Mr. C. G. D. Betts, 13 W. R., 94). Where the plaintiff and defendant both held outas from the same zemindars, but the plaintiff's potta which is of a later date is for a *moorful* which includes the land for which the defendant holds a lease, plaintiff's lease does not make him defendant's landlord—(Kalam v. Panchu, 11 W. R., 128; 3 B. L. R., A. C., 253). An alluvial formation accreted to a raiyat's jote and the proprietary right in the accretion was claimed by the Government on one hand and the neighbouring zemindar on the other. The raiyat held his jote under Government, but wishing apparently to make sure of the land whichever way matters turn out, he sued the landlord for a potta. The Court however, held that the suit was not maintainable. "Section 2 of Act X of 1859," observed Peacock, C.J., "enacts that every raiyat shall be entitled to receive a potta from the person to whom the rent of land held or cultivated by him is payable. In this case the rent of the jote is payable to Government, and as the accretion was to the jote, the plaintiff has no right to demand a potta from the zemindar or his ijaradar. He is not the raiyat of the zemindar or his ijaradar, nor is rent payable by him to the zemindar or his ijaradar for accretion"—(Campbell v. Krishna Dhun, Marsh's Reports, 67).

By operation of law.—As, for instance, when the landlord sues a trespasser in the alternative under section 157 of the Bengal Tenancy Act. So it has been held that a decree of a Civil Court in a suit (the plaint of which referred to section 30 of Reg. II, of 1819, and section 10 of Reg. XIX. of 1793) which declared the right of the zemindars to assess rent on land not proved to have been held under a grant prior to 1st December 1790, is sufficient to establish the relation of landlord and tenant between the zemindars and the party against whom the right of assessment was declared—(Srimati

(C) Where the relation has been created or continued by the operation of law or by change of parties.

Soudamini v. Sarup Chunder, 8 B. L. R., App. 82; 17 W. R., 363). But a different view has also been taken. Where the lands in question had been declared in a previous litigation between the parties to be *mal* lands of the plaintiff's zemindari, wrongfully held by the defendant under an invalid *lakheraj* title, it was held that such fact was not sufficient to convert the defendant into a tenant of the plaintiff—(*Soudamini v. Mohesh*, 19 W. R., 262). Under the provisions of Regulation V of 1799, section 5, and Regulation V of 1827, section 3, the Collector took charge of a sub-tenure as administrator of a deceased person to whom the sub-tenure belonged; it was held he was in no sense the tenant of the superior landlord, and consequently no suit for rent will lie against him—(*Collector of Bogra v. Dwarkanath*, 4 B. L. R., App., 80; 13 W. R., 194). Where a putnidar and his tenants were defendants in a suit brought by the zemindar for setting aside the putni, and both were by decree made liable for the mesne profits which the tenant eventually paid out of his own pocket, it was held that the effect was to cancel all relation of landlord and tenant between the putnidar and his tenant, and to give the tenant a right to receive back what he had paid—(*Rakhal Moni v. Brajendra*, 23 W. R., 303). Where A holds under B's tenant, his possession is not adverse to B, and if he continues to hold, the presumption is that he holds as before. If setting up a title to any portion of the property, he obtains a decree against B's alleged tenant, this will give a cause of action against A—(*Bungsaraj v. Mohunt Lal*, 20 W. R., 395).

By change of parties: See sections 72 and 73 of the Act. The relation of Reg. XVIII of 1812, landlord and tenant continues even when the interest of the s. 3, Cl. 2. former is transferred by private sale, gift or otherwise, or by an execution sale or by the operation of the laws of inheritance or will, or by a revenue sale,—where the purchaser has no legal power to avoid the tenant's interest, or having such power does not elect to exercise it. The law on this point has been laid down by section 109 of the Transfer of Property Act: "If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him." There may not be an express agreement between the parties to pay rent: and where a party occupies land within a zemindari as a tenant-at-will on term of paying rent, a purchaser of the zemindari would have a right after his purchase to treat him as a tenant—(*Gura Prosunna v. Sree Gopal*, 20 W. R., 99). A purchaser of land is bound by a contract between his vendor and a tenant, which is secured by the rent of the land remaining in the hands of such tenant, the contract being in the nature of an assessment of rent of the property sold—(*Churaman v. Musst. Patoe Koer*, 24 W. R., 68). So the relation of landlord and tenant continues when the latter is a permanent tenure-holder or fixed raiyat and his interest is transferred by sale, gift or mortgage (sections 12 and 18 of this Act), or by an execution sale (sections 13, 14 and 18) or by summary sale under any law relating to putni or other tenures (s. 8, Cl. 1 of Reg. VIII, of 1819; s. 105 of Act X, of 1859; s. 4 of Act VIII, of 1865, B. C.; s. 159 of this Act), or by the laws of succession (ss. 15 and 18 of the Act); so the relation continues when the tenant is an occupancy raiyat, and his interest is transferred by devolution or death (s. 23 of the Act) or by execution-sale for arrears of rent (s. 159), or by sale, gift or otherwise where his holding is transferable by usage (s. 183, illustration (1)), or where his interest is transferred by an execution sale for money

decree or by grants, sale, gift or otherwise with the consent of his landlord. Receipt of rent from the transferee has been held to be equivalent to such consent. A zemindar may recognize a transfer by receiving rent from the transferee—

Recognition of the transferee as tenant.

(Nolo Koomar v. Kisher Chunder, Sp. W. R., Act X, 112; Dwarkanath v. Allendi, 15 W. R., 320; Dhunput v. Velleyet Ali, id., 211; Anundmayi v. Mohendranarain, id., 264; Hanooman v. Musst. Koomerunnessa, 1 Hay, 266; Mcnah Jan v. Kurunamayi, 8 B. L. R., 1). A zemindar may by accepting rent assent to a transfer which involves a sub-division of a tenure—(Bharut Chunder v. Gangunarain, 14 J. R., 211). The mere cognizance or supposed cognizance by a zemindar of the fact of a party having purchased a tenure is not sufficient to cure the defect of non-registration. It must be shown that the zemindar has not only known of the transfer, but has accepted the transferee as his tenant—(Sarkies v. Kali Knmar, Sp. W. R., Act X, 98). Where a zemindar takes rent from a party as holder of a tenure, he cannot afterwards draw back and ignore the position of such party, even although the latter may not have been registered in his office—(Mirtanjoy v. Gopal Chunder, 10 W. R., 466; 2 B. L. R., A. C., 131). So again a landlord, by having allowed the sums paid into the Collectorate by a third party to be carried to his credit, was held to have clearly recognized the transfer from the tenant to the third party, although such transfer had not been registered—(Ramgobindo v. Doshobhooja, 18 W. R., 195). In the same way where a landlord, in executing a decree for rent, sold his raiyat's tenure, he cannot proceed against the old tenant for arrears of rent; but he must proceed against the execution-purchaser, notwithstanding the non-registration of the purchase in his sherista—(Prasumomoyi v. Blubotariini, 10 W. R., 494; Gopee Kristo v. Ram Kumar, Marsh, 2139). But the payment of rent to the gomasta for over two years without communicating the fact of purchase to the zemindar was held not to amount to a recognition of such transfer by the zemindar—(Brojo Bihari v. Aka Golam, 16 W. R., 97).

Section 111 of the Transfer of Property Act gives the law on this point (D.) Determination of succinctly: "A lease of an immovable property determines the relation of landlord and tenant—

- (a) by efflux of the time limited thereby;
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event;
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event;
- (d) in case the interest of the lessor and the lessee in the whole of the property become vested at the same time in one person in the same right;
- (e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;
- (f) by implied surrender;
- (g) by forfeiture; that is to say (1) in case the lessee breaks up an express condition which provides that on breach thereof, the lessor may re-enter, or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself, and in either case the lessor or his transferee does some act showing his intention to determine the lease;

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

(a) — To the first of these the corresponding section of the Bengal Tenancy Act is section 44, cl. (c), limited by section 45, which apply to a non-occupancy raiyat, but there is no corresponding provision for tenure-holder and necessarily.

none for permanent tenure-holder, fixed raiyat or occupancy raiyat, who cannot be ejected on this ground at all.

(b) — To the 2nd corresponds section 44, cl. (a), limited by section 46 of this Act.

(c) — As, for instance, by sale of the estate or tenure for its own arrears of revenue or rent, where the purchaser elects to determine the tenancy (Act XI of 1859, ss. 52 and 53; Act VII, B. C. of 1855 s. 12; Regulation VIII of 1879, s. 8 cl., 1 and s. 11, cl. 2; Act VIII of 1859, B. C., ss. 66 and 59, Act VIII of 1865 ss. 16, 4. There are exceptions to these.—Act XI of 1859, s. 51, Act VII, B. C. of 1868, s. 12, see the Appendix). The corresponding sections are ss. 159, 160 and 161 of this Act. So it has been held that where the lessor's interest terminates, the lessee must also go out.—(*Hurish Chunder v. Sree Kali*, 22 W. R., 274. Marsh, 166). But where the relation is once admitted, it continues, and

Non-payment of rent mere non-payment of rent does not determine the tenancy.

(d) — we have a similar provision in section 22 of this Act.

(e) — corresponds to section 86 of this Act.

(f) — corresponds to section 87.

(g) — (1) *Breach of condition*.—We have corresponding provisions in sections 10 and 18 (with respect to a permanent tenure-holder and fixed raiyat), in section 25 (with respect to an occupancy raiyat) and section 44, cl. a and b (with respect to a non-occupancy raiyat).

(g) — (2) *Disclaimer*.—Mr. Field in a note to his Digest, p. 17, observes: "Under English law a parol disclaimer of the landlord's title will effect a forfeiture of a tenancy from year to year or tenancy-at-will, if the landlord so elect; but will not effect a forfeiture of a lease for a term certain. But a disclaimer by matter of record, as, for example, when a tenant in answer to an action for rent denies the relation of landlord and tenant and sets up a title in himself or some third party will work a forfeiture of any lease. The principle of forfeiture by disclaimer, so far as it has yet been introduced into these provinces, rests (I believe) wholly upon case law; and the cases are not sufficiently numerous or exhaustive to have given form and shape to the principle in its application to this country. I think the principle is one which the Courts would properly apply in administering justice, equity and good conscience (see 4 Kent's Commentaries, 115); and I think it extremely desirable that the Legislature should define and regulate its application. Having regard to the circumstance of this country, I think mere words spoken or the claim by a tenant of a greater interest than he is entitled to (Woodfall, 283; Smith, 137) ought not to work a forfeiture; but I do not think that when a tenant in answer to a claim for rent or to avoid a legitimate enhancement, deliberately in Court denies the title of his real landlord and pretends to hold under a rival zemindar, and by way of snaking evidence in anticipation executes a registered *kabuliyat* in favour of such rival zemindar, forfeiture of his right of occupancy or whatever other right he possesses is a reasonable and proper retribution. That such *mala fides* is too common—the Zimba system in Backergunge is a notorious instance—the experienced are aware, and I know no more effectual way of striking a blow at an evil generally complained of than by enacting a reasonable rule as to forfeiture by disclaimer. This rule should of course provide for waiver of forfeiture by distraint for, or receipt of, rent accruing after the forfeiture or by other conduct on the part of the landlord shewing that, being aware of the disclaimer, he had elected to waive it." The case law on this point has only recently taken a settled form.

In the earlier decisions the Judges were doubtful and observed that it is not settled law that such denial works a forfeiture of the tenancy.—(*Mahomed Basiroollah v. Ahmed Ali*, 22 W

. R., 448; *Sreemutty Ahulya v. Bhyrob*, 25 W. R., 147). A tenant's statement that he has a good title as against a person alleging himself to be the assignee of the original landlord, does not constitute a forfeiture of the tenure in favour of the landlord or warrant the latter in suing for *khas* possession—(*Doorga Krishna v. Sree Banoo*, 18 W. R., 465). In all these cases, however, it seems to have been assumed that the law here allows forfeiture. In *Sutyabhama v. Krisna Chunder*, 1. L. R., 6 Cal., 55, Garth, C. J., observed: "The rule of the English law is that where by matter of record, a tenant disclaims his landlord's title, and sets up an adverse title in himself or in some third party, he thereby forfeits his tenancy. But without laying down any absolute rule here with regard to forfeiture in such cases, we think we are clearly justified in a case of this kind in refusing to allow defendants to change the whole nature of their defence at the last moment, and to set up in a Court of Appeal a plea which they had directly and fraudulently repudiated in the Court below." A, a raiyat with rights of occupancy, in a rent suit brought against him by B, the purchaser of an *Aima mehal*, denied the existence of the relationship of landlord and tenant between himself and B, on the ground that the lands occupied by him were not included in the *Aima mehal* purchased by B. B's rent suit having been dismissed for failure of evidence on this point, B afterwards brought a regular suit to evict A and for mesne profits. It was held that A, by denying the title of B in the rent suit, thereby forfeited his rights of occupancy, and became liable to eviction—(*Mozuharuddin v. Gobind Chunder*, 1. L. R., 6 Cal., 436). "We may observe," said Totterham, J., "that the doctrine of forfeiture is not entirely unknown to the law of landlord and tenant in Bengal, for section 85 of the Bengal Act VIII of 1869 distinctly provides for it in the event of the Collector being unable from the non-attendance of persons holding tenures and undertenures, to ascertain them at the measurement of any lands under that section." In a suit brought to recover rent in 1877, the defendant set up his *lakheraj* title; this suit was dismissed. In 1880, in a suit brought by the same plaintiff to obtain *khas* possession of the land in question in the former suit, against the same defendant and three others claiming under the same title as himself, the defence that the land was *lakheraj* was set up by all. It was held that the case fell within the principles of the case of *Satayabhama v. Krishna Chunder* and that the plaintiff, who had successfully proved that he had collected rents from the predecessors of the defendants, were entitled to evict them as trespassers on their failure to prove their *lakheraj* title—(*Ishan Chunder v. Shama Churn*, 1. L. R., 10 Cal., 41). "No doubt," observes Norris, J., "there are various rulings of this Court on this point, but it seems to us that the weight of authority is in favour of the view that when a tenant directly repudiates the relation of landlord and tenant and sets up an adverse title in himself, the landlord is entitled to take possession of the land, irrespective of the period during which the tenant may have been in possession"—(*Shumsher Ali v. Doya Bibi*, 8 C. L. R., 150. Compare also *Ram Nuffar v. Dhol Gobind*, 1 C. L. R., 421; *Dabee Missa v. Mangur*, 2 C. L. R., 208).

• But it is doubtful whether under the present Act, the doctrine of disclaimer can be enforced, against a permanent tenure-holder fixed raiyat or an occupancy raiyat, or a non-occupancy raiyat, because sections 10, 15, 25 and 44 of the Act specify the conditions under which the tenants can be ejected, and they provide that ejectment of them is not possible except under those conditions, and disclaimer is not one of such conditions. Mr. Ilbert's observations on this point also favour the same inference:

"I cannot advise the Council to give legislative sanction to what may fairly be described as an obsolescent doctrine of English law. I will not call it an obsolete doctrine, because it still appears in the text-books. But I call it an

obsolescent doctrine, because it is very rarely enforced, and when attempts are made to enforce it, the Courts regard it with disfavour and limit its application in every possible way. And it appears to me that the doctrine is even more dangerous in Bengal than it is in England. Owing to a variety of well known circumstances, such as the fact that the raiyat usually does not derive his title from contract, to the comparative rarity of written agreements, to the absence of definite landmarks, and to the shifting from natural causes of such landmarks as exist, it is often a matter of extreme doubt whether the relation of landlord and tenant exists between two persons with respect to a particular land. And when the existence of such a relation is denied or questioned on either side, we are by no means entitled to assume that the grounds for denying or questioning it are fraudulent or improper. We have done our best, by various provisions of this bill, to lessen the number of excuses for alleging this doubt, and to provide for cases in which it is alleged in good faith. Thus, we have in section 60 carried a step further the policy of the Bengal Registration Act by enacting that where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized on that behalf, shall be a sufficient discharge for the rent, and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person. We have by another section (sec. 61) enabled a tenant, who entertains a *bond fide* doubt as to the person entitled to his rent, to pay the rent into Court. We have said that when a person is sued for rent, and admits that rent is due but pleads that it is due to a third person, the plea is not to be entertained except on terms of payment into Court (sec. 150). And we have endeavoured to help the landlord who is in doubt whether to treat an occupant as a tenant or as a trespasser, by authorizing him to claim, in a suit for trespass, as alternative relief, a declaration that the defendant is liable to pay for the land rent at a rate to be fixed by the Court (sec. 157). By these and other provisions we have endeavoured to assist as far as is practicable and reasonable, both landlords and tenants; and I am not prepared to go farther."

With reference to the holders of a non-agricultural holding, for instance, the holder of a homestead, or a *surory* tenure-holder, section 111, cl. 9 of the Transfer of Property Act will prevail. (See sections 112 and 117 of that Act.)

(h) — we have a corresponding provision in section 45 of the Bengal Tenancy Act.

Territories under the Administration of the Lieutenant-Governor of Bengal.—The following districts are within the Administration of the Lieutenant-Governor of Bengal:—

1. Burdwan Division:—Burdwan, Bankura, Birbhum, Midnapore, Hooghly, Howrah.

2. Presidency Division:—Twenty-four-Perganás, Khulna, Nuddca, Jessore, Moorshedabad.

3. Rajshahye Division:—Rajshahye, Dinagepore, Rungpore, Bogra, Pubna, Darjeeling, Fulpaigori.

4. Dacca Division:—Dacca, Furreedpore, Backerganj, Mymensing.

5. Chittagong Division:—Lipperah, Noakhally, Chittagong, *Chittagong Hill Tracts*.

6. Patna Division:—Patna, Gya, Shahabad, Durbhanga, Mozuffarpore, Saran, Champaran.

7. Bhagulpore Division:—Bhagulpore, Monghyr, Purnea, Malda, *Sonthal Perganás*.

8. Orissa Division :—Cuttack (including Banki), Balasore, Puri, Tributary Mahals.

9. Chutia Nagpore Division—Hazaribagh, Lohardugga, Munbhoom, Singbhoom.

CHAPTER I.

PRELIMINARY.

Short title. I. (1). This Act may be called the Bengal Tenancy Act, 1885.

Act VIII of 1869 (B. C.) was christened "The Landlord and Tenant Procedure Act, 1869," by section 111 of that Act.

Commencement. I. (2). It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local Official Gazette, appoint in this behalf.

The date on which the Act comes into operation. The following Notification of the 4th September 1885 appears in the *Culcutta Gazette* of the 9th September 1885 :—

"In exercise of the powers vested in him by section 1 (2) of the Bengal Tenancy Act, and with the sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to declare that the Act shall come into force on the 1st November 1885."—*H. H. Risley, Offg. Secretary to the Govt. of Bengal.*

Suits and proceedings pending on the 1st November 1885 :—See notes under section 2 (1).

Previous to 1854, when the Legislative Council of India came into existence under 3 and 4 Will. IV, Cap. 85, each Presidency Government had power for itself to enact what were called Regulations; but in that year this legislative power ceased, and until the coming into operation of the Indian Council's Act, which received the Royal assent on the 1st August 1851, the Legislative Council of India was the sole legislative body. Since the coming into operation of that Act, the power of legislating has, within certain limits, been restored to Madras and Bombay, and from the year 1862 the Local Legislatures of Bengal, Madras and Bombay, pass Acts accordingly. Under "The Indian Council's Act, 1861," i. e., the 24 and 25 Vic. Cap. 67, the Governments of Bengal, Madras and Bombay have each power, subject to certain restrictions, to pass Acts.

By section 42 of the Act, the Governor-in-Council of each of the Presidencies of Madras and Bombay have power, at meetings for the purpose, to make laws and regulations for the peace and good Government of such Presidency; and for that purpose to repeal and amend any laws or regulations made prior to the coming into operation of the Act by any authority in India, so far as they affect such Presidency; but he has not the power to make any laws or regulations which

shall in any way affect any of the provisions of the Act, or of any other Act of Parliament in force, or that hereafter may be in force in such Presidency; nor by section 43 is it lawful for the Governor-in-Council of either Presidency, except with the sanction of the Governor-General, previously communicated to him, to make regulations or take into consideration any law or regulation for any of the following purposes, *viz.* :—

1.—Affecting the public debt of India, or the Custom duties, or any other tax or duty in force at the time of the passing of the Act, and imposed by the authority of the Government of India for the general purposes of such Government.

2.—Regulating any of the current coin, or the issue of bills, notes, or other paper currency.

3.—Regulating the conveyance of letters, by the post office, or messages by the Electric Telegraph, within the Presidency.

4.—Altering in any way the Penal Code.

5.—Affecting the religion or religious rites or usages of any class of Her Majesty's subjects in India.

6.—Affecting the discipline or maintenance of any part of Her Majesty's Military or Naval Forces.

7.—Regulating patents or copyrights.

8.—Affecting the relations of the Government with Foreign Princes or States.

It is, however, provided by this section that no law or provision of any law or regulation which shall have been made by any such Governor-in-Council, and assented to by the Governor-General as aforesaid, shall be deemed invalid only by reason of its relating to any of the purposes comprised in the above list.

Under the powers contained in section 44, the Governor-General in Council, on the 17th January 1862, by proclamation, extended the provisions of the Act touching the making of laws and regulations for the peace and good Government of Madras and Bombay to the Bengal Division of the Presidency of Fort William. By the same section he has power, from time to time, in his discretion, subject to the provisions of section 49, to extend the same provisions to the North-Western Provinces and the Punjab; and by section 46, he is further empowered to constitute from time to time new provinces, to which the provisions of sections 42 and 43 shall be applicable, and to appoint a Lieutenant-Governor to any Province so constituted in like manner as is provided by Act 17 and 18 Vic., Cap. 77, respecting the Lieutenant-Governors of Bengal and the North-Western Provinces; and by section 48, it shall be lawful for every such Lieutenant-Governor in Council thus constituted to make laws for the good Government of his respective province.

The Governor-General in Council has power by section 40 to declare or withhold his assent to the laws and regulations passed by such Governors or Lieutenant-Governors in Council under the authority of the Act. Her Majesty by section 41 has also power to disallow the same.

This brief account will show the necessity of the assent of the Governor-General in Council to every Act, whether it be passed by his own Council or by the Lieutenant-Governor in Council. Hence also the operation of the Act as settled by the Local Government needs to be sanctioned by the Governor-General in Council.

Act X of 1859 commenced to have effect from and after the 1st day of August 1859 by section 167 of that Act. Section 106 of Act VIII. of 1869 (B.C.) provided: "This Act shall take effect in those districts in the provinces subject to the Lieutenant-Governor of Bengal, to which the said Lieutenant-Governor shall extend it by an order published in

the *Calcutta Gazette*, and therefore the Act shall commence and take effect in the districts named in such order at the day and time which shall be in such order provided for the commencement thereof."

I. (3.) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal,

Local extent.

except the town of Calcutta, the division of Orissa, and the scheduled districts specified in the third part of the first schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the division of Orissa or any part thereof.

The Act extends by its own vigour to the whole of the territories under the administration of the Lieutenant-Governor of Bengal, except the town of Calcutta, the division of Orissa, and the Scheduled Districts.

It will be noted that, while the Lieutenant-Governor can extend the Act to Orissa or the Scheduled Districts, he cannot extend it to the town of Calcutta. He cannot again withhold the extension of the Act from any of his territories except Calcutta, Orissa, or the Scheduled Districts. The Act extends to his ordinary territories by its own vigour.

Power of the Local Government.

The Lieutenant-Governor is specially empowered to extend the whole Act or any portion of it to the Orissa Division, with the sanction of the Governor-General in Council, and he can, with like sanction, extend the whole or any portion of it to any Scheduled District under the power conferred on him by the Scheduled Districts' Act. Section 5 of that Act provides: "The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the *Gazette of India*, and also in the local *Gazette* (if any), extend to any of the Scheduled Districts, or to any part of any such District, any enactment which is in force in any part of British India at the date of such extension." Section 3 of the same Act provides: "The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the *Gazette of India* and also in the local *Gazette* (if any)—

- (a) declare what enactments are actually in force in any of the Scheduled Districts, or in any part of any such district;
- (b) declare of any enactment that it is not actually in force in any of the said districts, or in any part of any such district;
- (c) correct any mistake of fact in any notification issued under this section:

Provided that a declaration once made under clause (a) or clause (b) of this section shall not be altered by any subsequent declaration other than a declaration under clause (c) of this section."

Rent Law in the town of Calcutta.—"The law generally to be applied by this Court within Calcutta is the common law of England, subject to exceptions, qualifications, and additions which it is unnecessary at present to notice. By section 17 of 21 Geo. III, Cap. 70, it is provided that 'inheritance and succession to lands, rents and goods, and all matters of contract and dealings between party and party, shall be determined, in the case of Mahomedans, by the laws

and usages of Mahomedans, and in the case of Gentoos, by the laws and usages of Gentoos.' In the absence of express authority, I am of opinion that tenancy created by express contract between Hindus in Calcutta is within the words 'matters of contract and dealing between party and party' in 21 Geo. III, Cap. 70, section 17, and the right of the parties and the incidents of the tenancy must be governed by Hindu Law"—(1. L. R., 5 Cal., 683, *per* Wilson, J., in *Russiklal Muduk v. Lokenath Kurmukur*). In *Madhub Chundra Paramanik v. Raj Koomar Das*, 14 B. L. R., 76, however, it has been held that the Contract Act is applicable to Hindus residing in Calcutta, and that the Statute 21, Geo. III, Cap. 70, which applied to the Supreme Court and gave to Hindus the right to have matters of contract decided by their own laws, became, if its provisions apply to the High Court, part of the law of that Court not by virtue of the Statute itself, but by virtue of the Charter, which was subject to alteration by the Governor-General in Council; and having ceased to have any operation as an Act, it was unnecessary to repeal it expressly by the Contract Act. "Section 37," observed Couch, C. J., in this case, "of Act IX of 1850, by which the Small Cause Court, Calcutta, was regulated, provides that the Judge of the Court shall be empowered to determine all questions as well of fact as of law and equity, as administered in the Supreme Court, in all cases which they have authority to try. The words 'as administered in the Supreme Court,' must be construed as referring, not to the law or equity which might at the time when the Act was passed, be administered in the Supreme Court, but to the law or equity administered at the time of the suit. The intention of the Legislature was that the Small Cause Court having been given to it a jurisdiction to entertain suits which were not allowed to be brought in the Supreme Court, there should be a uniformity of law or equity in the two Courts. If the law or equity administered in the Supreme Court was, either by legislation or the decisions of the Judges, in any way altered, I think it was the duty of the Small Cause Court to adopt such alteration, and from time to time to decide the questions which came before it in the same way as they would be decided in the Supreme Court. Then Act XXVI of 1864 was passed for the purpose of extending the jurisdiction of the Small Cause Court: and by section 16 it is provided that it and Act IX of 1850 shall be read and construed as one Act, as if the several provisions contained in Act IX of 1850, not inconsistent with the provisions of the latter Act, were repealed and re-enacted in it. The effect of that appears to be that from the time when Act XXVI of 1864 was passed, the Small Cause Court was regulated by a new Act consisting of such of the provisions of Act IX of 1850 as were not inconsistent with Act XXVI of 1864, and also of the provisions contained in that Act. If you incorporate, as you must, section 37 of Act IX of 1850 with the Act of 1864, it would literally read that the law to be administered in the Small Cause Court is the law which was administered in the Supreme Court; but it is clear that this could not have been the intention, because the Supreme Court had ceased to exist, and the High Court had been substituted for it. And the first section of Act XXVI of 1864 says that the words 'Local Government' and 'High Court' as used in that Act, were to bear the same meaning as the words 'Governor in Council' and 'Supreme Court' as used in Act IX of 1850. The result is that by virtue of Act XXVI of 1864 suits in the Small Cause Court were to be decided according to the law or equity administered in the High Court. Then the question is, what is the law which is administered in this Court? The Charter of 1865, in the 19th clause, provides for that. It is: 'We do further ordain that with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Fort William in Bengal in the exercise of its Ordinary Original Civil Jurisdiction, such law or equity shall be the

law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.' This renders it necessary to see what was the provision in the Charter of 1862. Cl. 18 of that Charter is: 'We do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Fort William in Bengal in the exercise of its Ordinary Original Civil Jurisdiction, such law or equity shall (until otherwise provided) be the law or equity which would have been applied by the said Supreme Court at Calcutta to such case if these Letters Patent had not issued.' It is to be the law or equity which would have been applied by the Supreme Court of Calcutta if the Letters Patent had not issued, but the law or equity to be administered in the High Court, does not depend upon any previous Act of Parliament. The Act 21, Geo. III, Cap. 70, which gave to Mahomedans and Hindus the right to have matters of contract and dealing between party and party, inheritance and succession, determined by their laws and usages, was an Act which was applicable to the Supreme Court. If the provision has effect in the High Court, it is not by virtue of the Act, but by virtue of the Charter, which by its terms introduces into it the directions contained in the Act. The right or privilege by the Contract Act was passed (subject to what I shall say as to that Act) no longer dependent on the Act of Geo. III, but upon the Charter itself. Her Majesty had power by the Act which authorized the establishment of the High Courts to give to them such jurisdiction as she thought fit, and to make the provisions which are contained in the Charter; and all that is done is to provide that the law or equity to be applied to each case shall, until otherwise provided, be the law and equity which would have been applied by the Supreme Court. 'Until otherwise provided' shows that there was an intention to give to the Government here in its legislative capacity a power to make alterations which would affect this provision. There are not only those words, but there is the 44th clause of the Charter of 1835, where it is expressly declared that the provisions in it are subject to the legislative powers of the Governor-General in Council.

"Therefore we have to see whether Act IX of 1872 governs cases between Mahomedans or Hindus brought before the High Court in the exercise of its Original Jurisdiction. If it does, it will certainly also govern cases which have to be decided by the Small Cause Court. The first section says in the most general terms that the Act is to extend to the whole of British India. These words would certainly include the limits of the Original Jurisdiction of this Court, and all persons living within those limits, who sue or are sued in it. Unless we find in the Act something to limit the meaning, we ought to come to the conclusion that this was the intention of the Legislature. There are several illustrations in the Act which show that it was the intention of the Legislature to apply it to Hindus. It was replied to this by Mr. Bonnerji that these illustrations may be accounted for by the Act being applicable to Hindus in the mofussil, and that it does not follow from them that it was the intention to apply it within the limits of the Original Jurisdiction of this Court. Still, the circumstances that it was evidently the intention of the Legislature that it should apply to Hindus beyond the limits of the Original Jurisdiction make it more incumbent on a person seeking to establish an exception in respect of the Original Jurisdiction to show that the exception is apparent in the Act. There are no words showing that it was intended that there should be such exception. The only provision which might raise a doubt about it is that which follows in the first section, where it is said: 'The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof, but nothing herein contained shall affect the provisions of any Statute, Act or Regulation not here-

by expressly repealed, not any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.' The grammatical construction of this is that the words 'not inconsistent with the provisions of this Act,' apply to any 'usage or custom of trade,' or 'any incident of contract.' This excludes any repeal by implication, because the Legislature has said that, unless the enactment is mentioned in the schedule, it is not to be affected by the Act. This Act of Geo. III is not mentioned in the schedule, and therefore it cannot be considered to be repealed. This would be important if it had been necessary to repeal the Act of Geo. III, and there would have been great difficulty in deciding the question before us. But for the reasons I have stated, it was not necessary to do so. The Act of Geo. III had ceased to have operation as an Act. The Court to which it applied had ceased to exist. The substance of it, no doubt, continued to be the law till the Contract Act came into force, but it was the law by virtue of the Charter which was subject to alteration by the Legislative power. For those reasons I think that the Contract Act must be considered to apply to the present case."

Rent Law in the Division of Orissa:—In Orissa, Acts X of 1859, VI, B.C. of 1862, and IV, B.C. of 1867 are in force. For districts of this Division, see *ante*, p. 13; the mahal of Banki which was once a scheduled District is now included in Katak by Act XXV of 1881.

Rent Law in the Scheduled Districts:—Part III* of the First Schedule of Act XIV of 1874 specifies the following districts as the Scheduled Districts, Bengal:

<i>Districts.</i>	<i>Rent Law in force therein.</i>
I.—Jalpaiguri and Darjeeling Divisions.	{ Acts X of 1859, VI, B.C. of 1862, and IV, B.C. of 1867.
II.—Chittagong Hill Tracts (Act XXII of 1860).	{ Section 17 of 21 Geo. III, Cap. 70; s. 1 of Act IX of 1872.
III.—The Sonthal Parganas.	{ Reg. VIII of 1793, V and XVIII of 1812, Reg. III of 1872.
IV.—The Chutia Nagpur Division.	{ Acts II of 1869, B.C. and I of 1879, B.C.; Act X of 1859.
V.—The Mahal of Angul and Banki (Banki has been withdrawn from the Scheduled Districts by Act XXV of 1881 and annexed to the District of Cuttack).	{ Section 17 of 21 Geo. III, Cap. 70; s. 1 of Act IX of 1872.

Rent Law in Assam:—Act X of 1859 does not apply to Assam—(*Prasidha Narayan v. Man Kach*, I. L. R., 9 Cal., 330; but see *Konaram v. Dhanaram*, I. L. R., 6 Cal., 196.) In Sylhet, however, Act VIII of 1869, B.C. does prevail.—See Notification of the 24th February, 1870, (*Calcutta Gazette* of 2nd March, 1870, p. 361); also notification, No. VII of the 22nd August, 1878, (*Government of India Gazette*, of the 12th August, 1878, part I, p. 533).

Local extent of the old Acts:—Act X of 1859 extended to the Presidency of Fort William in Bengal. Under section 106, Act VIII of 1869, B.C., was extended by an order of the Lieutenant-Governor of Bengal, dated the 24th February 1870, to all the districts mentioned at p. 13, *ante*, except those italicised. Sylhet was then a Bengal district in the Dacca Division and the Act was extended to Sylhet too.

2. (1) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

Repeal.

The Act comes into operation from the 1st November 1885, and from that date the enactments specified in schedule I stand repealed. It, however, does not make any provisions as to the suits and proceedings commenced before it comes into operation. Are they to be governed by the old or the new Act? Act VIII of 1869 (B. C.) provided that "whenever any suit or other proceeding under the provisions of the Acts in the schedule (D) mentioned, or any of them, shall, at the time when this Act comes into operation in any place have been instituted before any Collector or other officer, having, under the provisions of the same Act, or any of them, jurisdiction in such suit or proceeding, such suit or proceeding and all appeals therein shall be heard and determined, and execution of any decree or order therein shall be had, and the practice and procedure shall be such and the same, as if this Act had not been passed" (section 108). The new Act has not a similar provision. We must, therefore, read this Act with section 6 of the General Clauses' Act, which provides: "The repeal of any Statute, Act or Regulation shall not affect any proceedings commenced before the repealing Act shall have come into operation." It has been held by a Full Bench of the Bombay High Court that the words "any proceedings" in the above section included all proceedings in any suit from the date of its institution to its final disposal, and therefore included proceedings in appeal—(*Ratan Chaud and Shri Chand v. Hanumantrav Shibakash*, 6 Bom. H. C. Rep., 166.) With this view of the section, Garth, C.J., agreed (in *Ranjit Sing v. Mohan Koer* and a batch of cases, 1 L. R., 3 Cal., 662, F. B.; 2 C. L. R., 391.) In this case Mr. Justice Jackson observed: "We ought also to hold that section 6 of Act I of 1868 will also cover specific proceedings taken in execution of a decree which have been commenced before the Code came into force, i. e., before the repealing Act became operative. By making this use of the 6th section of the General Clauses' Act and by taking the view which I have taken of the effect of section 3 of the Civil Procedure Code, it seems to me that all difficulty is avoided. The provisions of the Code will then have no retrospective effect so as to injure any right of action or right of appeal existing at the time when the Code came into effect; at the same time that the procedure as intended by the Legislature will come into force with all its incidents in every case at the time indicated, that is to say, (1) the procedure in suits instituted after the Code came into force will be wholly subject to its provisions; (2) the procedure in suits commenced before it came into force and pending at that time will be regulated by the previous law up to decree, and by the Code after decree; and (3) the procedure after decree in suits determined before the Code came into force would thereafter be governed entirely by the Code as to new proceedings, but not as to proceedings already commenced, which, according to the view now suggested, are specifically protected by Act I of 1868." This view will apply with modification to the new Act. Suits or execution proceedings of decrees or appeals commenced before the 1st November 1885 will be governed by the old Act. And so in respect of decrees obtained before the 1st November 1885, proceedings or appeals commenced after the Act came into operation will be governed by the old Act—See *Mangal Pershad Dicht v. Grija Kant Lahiri*, 1 L. R., 8 Cal., 51, P. C. in which their Lordships held that all applications for execution of a decree are applications in the suit which resulted in that decree. This is consistent with section 108 of the old Act. So in

Behary Lal v. Goberdhun, I. L. R., 9 Cal., 446 which though reviewed enunciates the principle. (Compare *Obhoy Churn Koondoo v. Golam Ali*, I. L. R., 7 Cal., 413; *Uda Begum v. Imamudin* I. L. R., 2 All., 74; *Syud Nadir Hossein v. Bissen Chand*, 3 C. L. R., 437; *Elahi Bqksh v. Marichow*, I. L. R., 4 Cal., 825; 3 C. L. R., 593; *Chinto Joshi v. Khrisnaji Narayan*, I. L. R., 3 Bom., 214; *Narandas v. Baj Mancha*, I. L. R., 3 Bom., 217; *Vidyarami v. Chandra Shikaram*, I. L. R. 4 Bom., 163; *Thakur Pershad v. Ashan Ali*, I. L. R., 1 All., 668).

In *Huro Sundari v. Bhojohari*, I. L. R., 13 Cal., 86, the question was directly raised, and the Court (Wilson, and O'Kineally, JJ.) delivered the following judgment:

"The question raised in this case is whether an appeal lies. The decree appealed against was a rent-decree of such a character that under section 102 of the old Rent Act (VIII of 1869 B.C.), no second appeal would lie to this Court. After the date of that decree, the new Rent Act (VIII of 1885) was passed, and that Act repealed Section 102 of Act VIII of 1869 and substituted other provisions on the subject and, we may take it for the purpose of the present point, that those provisions are such that the present appeal would not be excluded by them.—The question whether this appeal lies or not, depends on the construction of section 6 of the General Clauses' Act. (I of 1868). That section says "the repeal of any Statute, Act, or Regulation shall not affect anything done or any offence committed, or any fine or penalty incurred, or any proceedings commenced before the repealing Act shall have come into operation." The question is whether the words "any proceedings commenced before the repealing Act shall have come into operation" include an appeal against a decree made before the passing of the repealing Act. If they do, the repealing Act cannot give the right of an appeal in this case. We think that there is clear authority for saying that the word "proceedings" in sec. 6 of the General Clauses' Act does include an appeal. In the case of *Mungul Pershad Dichit* against *Girija Kant Lahiri*, reported in *Indian Law Reports*, VIII, Calcutta, page 51, a very similar question was before their Lordships of the Privy Council with regard to the construction of the Limitation Act (IX of 1871). By section 1 of that Act, nothing contained in certain portions of the Act was to apply to suits instituted before the 1st of April 1873; and it was held by their Lordships that applications for execution in suits instituted before the passing of that Act fall within those terms. Their Lordships said: "It appears to their Lordships that a thing which applies to an application in a suit applies to the suit, and that an application for the execution of a decree is an application to the suit in which the decree was allowed." If an application for the execution of a decree in a suit is a proceeding to the suit, it would seem to follow that an appeal is also a proceeding to the suit, and the word 'proceedings' appears to be quite as wide a word as 'suit'. But on the point before us there are no less direct decisions. In the case of *Ratan Chand Srichand* against *Honamuntrav Shibokas*, reported in VI, *Bombay High Court Reports*, page 166, the question was raised in this way: There was an Act in force under which an appeal was given in certain cases. That Act was repealed and on the date on which it was repealed, the decree in question had already been passed but no appeal had been filed and the question was whether on the construction of section 6 of the General Clauses' Act, the word "proceedings" in that section included an appeal,—whether, therefore, the appeal lay. The Court held that an appeal was a part of the "proceedings" and therefore was not affected by the repealing Act. The same view was taken by two Judges, the present Chief Justice and Jackson, J., in a Full Bench of this Court, in a series of cases reported in the *Indian Law Reports*, 3, Cal., page 662 and the same view was also taken by a

Full Bench of the Allahabad High Court in the case of Thakur Prosad against Asshamally reported in the I. L. R., Vol. I., All., page 66. These cases are on all fours with the present case with this exception that there an appeal was given under the repealed Acts, and it is held that the repealing Act did not take away the appeal, here the repealed Act did not allow an appeal. It follows on the same principle that the repealing Act cannot give an appeal. We hold therefore that no appeal lies in this case. The appeal will be dismissed with costs."

So in Rule No. 734 of 1886 (No. 462), decided on the 20th May 1886, the Court (Mitter and Grant, JJ.) observed:

"We think that this rule must be made absolute. The application for execution in this case was made before the new Rent Act came into operation. The attachment and proclamation were also made under the old Act. In that state of things, although the sale took place after the new Act came into operation, it does not apply to the present case. Section 6, Act I of 1868, is quite clear upon that point. That being so, the Lower Court had no power to set aside the sale under the provision of the new Act. The order of the Lower Court will be set aside with costs."

But in Rule No. 798 of 1886 (No. 400), decided on the 27th May 1886, the High Court seems to have adopted another view. The Court (Prinsep and Beverley, JJ.) observed:

"Execution of the decree for arrears of rent obtained by the petitioner was taken out on the 6th of January last. The proceedings therefore, in our opinion would be regulated by the Bengal Tenancy Act of 1885. The tenure of the debtor was attached and advertised for sale. A claim was made by third party to have two-thirds of this tenure exempted from sale as having been purchased by him. The Moonsiff found that the claimant had purchased one-third and accordingly exempted that one-third share from sale. An objection has been raised under Section 170 of the Bengal Tenancy Act to the effect that the Moonsiff acted without jurisdiction. That Section provides that the Sections of the Code of Civil Procedure under which such an order could be passed shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon. Under such circumstances we set aside the Moonsiff's order as without jurisdiction. We make the rule absolute with costs."

In this case, however, it does not appear whether the decree was obtained before the new Act came into force; and the attention of the Court does not seem to have been drawn to Section 6 of the General Clauses Act or to *Mangal Pershad Dichit v. Girija Kant Lahiri*, I. L. R., 8 Cal., 51, P. C., in which their Lordships held that an application for execution of a decree is an application in the suit which resulted in that decree, and that therefore if the suit is instituted under the old Act, the application for execution though filed after the new Act came into force is substantially a proceeding commenced under the old Act.

The following extracts from Maxwell's Interpretation of Statutes (pp. 191-202) may help the reader to some extent on this point:

"Upon the presumption that the Legislature does not intend what is unjust rests the leaning against giving a statute a retrospective operation. It is a general rule that all Statutes are to be construed to operate in future, unless from the language a retrospective effect be clearly intended. *Nova constitutio futuris formam imponere debet, non præteritis.* It has been said that nothing but clear and express words will give a retrospective effect to a Statute, and that, however much the present tense may be used in it, it must be construed as applying only to future matters. Even a Statute which confers a benefit, such as abolishing a tax, would not be construed retrospectively to relieve the persons in the property already subject to the burden before it was abolished. * * *

"It is where the enactment would prejudicially affect vested rights, or the legal character of past Acts, that the presumption against a retrospective operation is strongest. Every Statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imparts a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective operation. * * *

"Where the law is altered pending an action, the rights of the parties are decided according to the law as it existed when the action was commenced unless the new Statute shows a clear intention to vary such rights. * * *

"However when the intention is clear that the Act should have a retrospective operation, it must unquestionably be so construed, however unjust and hard the consequences may appear. Thus, after the passing of Lord Tenterden's Act, 9 Geo. 4, C. 14, which enacted that in actions grounded upon simple contracts, no verbal promise should be "deemed sufficient evidence" of a new contract to bar the Statute of Limitations, it was held that such a promise given before the Act, and which was then sufficient to bar the Statute, could not be received in evidence in an action begun before, but not tried till after the passing of the Act. This decision has been supported on the ground that the time for deciding what is, or is not evidence, is when the trial takes place; and that when the Act told the Judge what was, and was not then to be in evidence, he was bound to decide in obedience to it. Some stress also was laid on the circumstance that the Act did not come into operation until eight months after its passing; and the concession of this interval was thought to show that the hardship in question had been in the contemplation of the Legislature, and had been thus provided for. On this ground, it was held that the 11 and 12 Vict. C. 43, S. 11, which limits the time for taking summary proceedings before justice to six months from the time when the matter complained of arose, was held fatal to proceedings begun after the passing of the Act, in respect of a matter which had arisen more than six months before it was passed; though the interval between the passing of the Act and its coming into operation was only six weeks. If the Act had come into immediate operation, it was observed, the hardship would have been so great, that the inference might have been against an intention to give it a retrospective operation; but the provision suspending its operation, for, however short a time, was to be taken as an intimation that the Legislature had provided the period within which proceedings respecting antecedent matters might be taken.

"In the same way the 16th section of the Mercantile Law Amendment Act 1856, which enacted that no person should be entitled to commence an action after the time limited, by reason of his being abroad or in prison, was held to apply to causes of action which had accrued before the Act was passed. But some weight was due to the circumstance that another section of the same Act kept alive in express terms a cause of action already accrued, and thus afforded the inference that no such intention had been entertained, as none was expressed, as regards cases under the 10th section.

"In both of the above cases, however, the construction, though fatal to the enforcement of a vested right, by shortening the time for enforcing it did not in terms take away any such right; and in both it seems to fall within the general principle that the presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the Courts, even where the alteration which the Statute makes has been disadvantageous to one of the parties. Although to make a law for punishing that which, at the time when it was done, was not punishable is contrary to sound principle; a law which merely alters the procedure may, with perfect propriety, be made applica-

ble to past as well as to future transactions; and no secondary meaning is to be sought for an enactment of such a kind. It does not follow that because a suitor has a cause of action, he has also a vested right to enforce it by the course of procedure and practice which was in force when he began his suit. He has only the right of prosecuting it in the manner prescribed for the time being, by or for the Court in which he sues; and if an Act of the Parliament alters the mode of procedure, he has no other right than to proceed according to the altered mode. The remedy does not alter the contract or the tort; it takes away no vested right, for the defaulter can have no vested right in a state of the law which left the injured party without, or with only a defective remedy. If the time for pleading were shortened, or new powers of amending were given, it would not be open to the parties to gainsay such a change; the only right thus interfered with being that of delaying or defeating justice; a right little worthy of respect.

"When the Legislature gave a new remedy for enforcing rights in the Admiralty, by the Admiralty Acts of 1840 and 1861, those Acts were held to extend to rights which had accrued before the new remedy had been provided. So, the Court of Chancery which acquired jurisdiction under the 23 and 24 Vict. c. 35, to relieve in respect of the forfeiture of a lease in consequence of a breach of a covenant to ensure, exercised this new jurisdiction where the breach occurred after, but the lease had been made before the Act was passed (three other cases are stated).

"But the new procedure would be presumedly inapplicable, where its application would involve a breach of faith between the parties. * * *

The reader will consider the arguments about the temporary suspension of the Act, about the procedure, and about a new remedy quoted above with reference to the Bengal Tenancy Act, sections 174 and 153, and other provisions. That this Act has some retrospective provisions (ss. 178 and 37) should also be considered with reference to these arguments.

The enactments in Schedule I are repealed.—For the nature of those enactments, see the Schedule. For the enactments repealed by Act X of 1859 and Act VIII of 1869 B.C., see the Introduction *ante*, and also the Schedule I and notes.

2. (2). When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that division or part.

As to the enactments now in force in Orissa, see section 1 (3), and notes, p. 18.

2. (3). Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

Document is "any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means intended to be used, or which may be used, for the purpose of recording that matter or as evidence of that matter" (Indian Evidence Act, s. 3; Indian Penal Code, s. 29.) This definition is wide enough to include notifications, rules, or orders made by the Government or the High Court.

But suppose there is a document prior to 1st November 1885 in which the parties agree that enhancement of rent will be allowed under the Rent Act then in existence at a certain rate after a fixed number of years, will that document be construed to refer to this Act, and will section 29 operate as a bar? Literally construed, the sub-section may go to that extent, but I don't think, it was the object of the Legislature, to cover such a case.

2. (4). The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

The original section in the Rent Commission Bill had another word 'enactment' before the word 'right,' but it has been omitted. There was another sub-section :

"This repeal shall not affect

"(a) the past operation of any enactment hereby repealed, nor anything duly done or suffered thereunder; nor

"(b) any right, privilege, obligation or liability incurred under any enactment hereby repealed; nor

"(c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability as aforesaid; and any such investigation, legal proceeding and remedy may be carried on as if this Act had not passed."

Regulation XLI of 1793 provided in conformity with English maxims—(1)

The Interpretation Act of the Bengal Council and the General Clauses Act. "that one part of a regulation is to be construed by another so that the whole may stand" (section 19); (2) "that if any regulation differs from a former regulation, either wholly or partially, the new regulation is to be considered as a virtual repeal of the old one so far as it may differ from the latter, provided that the new regulation be couched in negative terms or by its matter necessarily imply a negative" (section 20); and (3) "that if a regulation that rescinds another regulation is itself afterwards rescinded, the original regulation is to be considered as revived without any formal declaration to that purpose" (section 21). The whole of this Regulation was repealed by Act VIII of 1868 save as provided in section 1 *idem*, q. v. Section 2 of Act V of 1867 (B.C.) provides: "Whenever any Act shall after the time fixed for the commencement of this Act be passed repealing in whole or in part any former Act or Regulation, and such Act shall itself be repealed, such last repeal shall not revive the Act or Regulation or provisions before repealed, unless words be added reviving such Act, Regulation or provisions." So does section 3, cl. 1 of Act I of 1868 provide: "In all Acts made by the Governor-General of India in Council after this Act shall have come into operation for the purpose of reviving either wholly or partially a Statute, Act, or Regulation repealed, it shall be necessary expressly to state such purpose." Section 6 of that Act provides: "The repeal of any Statute, Act, or Regulation shall not affect anything done or any offence committed, or any fine or penalty incurred, or any proceedings commenced before the repealing Act shall have come into operation." So section 3 of Act V of 1867 (B.C.) lays down: "Whenever any Act shall, after the time fixed for the commencement of this Act (1st June 1867) be passed repealing in whole or in part any former Act and substituting some provision or provisions instead of the provision or provisions so repealed, the provision or provisions so repealed shall remain in force until the substituted provision or provisions shall come into operation by force of the last mentioned Act."

Definitions.

3. In this Act, unless there is something repugnant in the subject or context :—

The words “unless there is something repugnant” are useful, see notes to the definition of the word “prescribed.”

Section 2 of the General Clauses Act (Act No. I of 1868) provides : “In this Act and in all Acts made by the Governor-General of India in Council after this Act shall have come into operation,—unless there be something repugnant in the subject or context,—

(1.) Words importing the masculine gender shall be taken to include females ;

(2.) Words in the singular number shall include the plural, and *vice versa* ;

(3.) “Person” shall include any Company, or association, or body of individuals, whether incorporated or not ;

(4.) “Year” and “month” shall respectively mean a year and month reckoned according to the British Calendar ;

(5.) “Immovable property” shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth ;

(6.) “Movable property” shall mean property of every description, except immovable property ;

(7.) “Her Majesty” shall include Her heirs and successors to the Crown ;

(8.) “British India” shall mean the territories for the time being vested in Her Majesty by the Statute 24 and 22 Vict., cap. 106 (*An Act for the better Government of India*) other than the Settlement of Prince of Wales’ Island, Singapore, and Malacca ;

(9.) “Government of India” shall denote the Governor-General of India in Council, or during the absence of the Governor-General of India from his Council, the President in Council, or the Government of India alone, as regards the powers which may be lawfully exercised by them or him respectively ;

(10.) “Local Government” shall mean the person authorized by law to administer executive Government on the part of British India in which the Act containing such expression, shall operate, and shall include a Chief Commissioner ;

(11.) “High Court” shall mean the highest Civil Court of appeal in such part ;

(12.) “District Judge” shall mean the Judge of a principal Civil Court of original jurisdiction but shall not include a High Court in the exercise of its ordinary or extraordinary original Civil Jurisdiction ;

(13.) ‘Section’ shall denote a section of the Act in which the word occurs ;

(14.) ‘Will’ shall include a Codicil, and every writing making a voluntary posthumous distribution of property ;

(15.) “Oath,” “swear,” and “affidavit” shall include affirmation, declaration, affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing ;

(16.) “Imprisonment” shall mean imprisonment of either description as defined in the Indian Penal Code ;

(17.) And in the case of any one whose personal law permits adoption, “son” shall include an adopted son, and “father” an adoptive father.”

3. (1) “Estate” means land included under one entry in any of the general registers of revenue-paying lands and revenue-

free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government *khás maháls* and revenue-free lands not entered in any register.

"We have defined 'estate' to mean land included under one entry in any of the general registers of revenue-paying and revenue-free lands. It thus means the interest immediately below the paramount interest which Government has in the land" (R. B. C.); and in the case of *khás maháls*, 'estate' means the paramount interest itself.

"Estate" is defined in section 1 of Act VII of 1868 (B.C.) to "mean any land or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the Register known as the General Register of all revenue-paying estates, or in respect of which a separate account may, in pursuance of section 10 or section 11 of the said Act XI of 1859 have been opened." Compare also section 1, Act IV of 1870 (B.C.), section 3 of Act VI of 1873 (B.C.), section 3 of Act VII of 1876 (B.C.), section 4 of Act VIII of 1876 (B.C.). In section 3, clause 1 of Act XVIII of 1873 (Rent, N.-W. Provinces) "*Mahal*" means—(a) "any local area held under a separate engagement for the payment of land revenue, or for which a separate record of rights has been framed; (b) any local area of which the revenue has been assigned or redeemed and for which a separate record of rights has been framed."

General registers &c. maintained under the law. See Appendix *post*, ss. 3 and 4 of Act VII, B.C. of 1876.

Includes Government *khás mahál* &c. This Act therefore becomes the rent law for Government estates, and estates under the management of the Court of Wards, as for ordinary estates. It repeals Act VIII of 1879 B.C., and the only advantage that the Government and the Court of Wards now possess over private zemindars, is the certificate procedure of Act VII of 1868 B.C. (section 195 of this Act).

It should be noted that unregistered revenue-free land is now included in "estate."

3. (2) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

'Proprietor' "includes any tenant by whom any *estate* or *tenure* is held directly under Government." (Act VII of 1868 B.C., s. 1). (For other definitions of "proprietor," see section 3, Act VI (B.C.) of 1873; section 3, Act VII (B.C.) of 1876; and section 4, Act VIII (B.C.) of 1876. The *mutawalli* of a Mahomedan endowment, the *shebait* of a Hindu endowment, a mortgagee or a manager is therefore a proprietor. The definition in this Act is so drafted as to include estates held in trust, but not tenures except revenue-free lands which are within the definition of "estate."

3. (3) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

This is a new attempt. The owner of an estate is termed a proprietor. The interest next below an estate and superior to that of a raiyat belongs to a tenure-holder, and below him is the under-tenure-holder of different grades, and we

then get down to the raiyat but all of these, from the tenure-holder to the raiyat inclusive, are tenants. The person under whom the tenant holds need not be the proprietor or the owner of the land, so that if a person holds by payment of rent under a trespasser or under one who has no title to the land, his status as a tenant still obtains. Accordingly it has been held that the mere fact that the person to whom a raiyat has for some years paid rent had no title to the land cannot take away from him the character of a raiyat—(Syud Ameer Hossein v. Sheosahai, 19 W. R., 335.) So a raiyat occupying and cultivating land for more than twelve years under a landlord who has no title to the land nevertheless acquires a right of occupancy—(Zoolfun v. Radhika Prosunno, I. L. R., 3 Cal., 560). But the tenant must be holding *bonâ fide* and must not be in collusion with the trespasser or the person under whom he holds, otherwise he would be treated as a trespasser. *Vide* the decisions quoted under the Preamble. The word “proja” does not define the status of a tenant—(Kadarnath v. Sookoomari, 22 W. R., 398).

But for special contract:—This covers jungleboori tenants and quit rent-holders, and holders of service tenures.

3. (4) “Landlord” means a person immediately under whom a tenant holds, and includes the Government.

In Act XVIII of 1873, section 3, clause 3, *landholder* “means the person to whom a tenant is liable to pay rent.”

It seems that a proprietor is not necessarily a landlord nor *vice versa*, and that ‘landlord’ being a correlative of ‘tenant’ has as many grades in it as there may be in the ‘tenant’.

3. (5) “Rent” means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant:

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III of this Act, “rent” includes also money recoverable under any enactment for the time being in force as if it was rent.

In Warren’s Blackstone, rents are described as incorporeal property. It is worthy of remark that according to English law rent is something issuing out of the thing demised, but differing from it in nature, and not part of the thing itself, for that would not be a *reservation*, but an *exception*. Thus a reservation to the owner of the land, of its vesture or herbage would not be good—See *Smith’s Law of Landlord and Tenant*, 2nd ed., p. 115, and authorities there quoted. “*Rent*” is defined by Chief Baron Gilbert in his *Treatise on Rents*, p. 9, to be an annual return made by the tenant, either in labour, money or provisions in retribution for the land that passes, from which you will observe that, though rent is usually reserved in money, it need not be so: or even in those other things mentioned by Gilbert, but which are only given as examples. It may, as is said by Lord Coke, (1 Inst. 142, a), consist of spurs, horses, or other things of that nature, or of services or manual labour; as, to plough a certain number of acres for the landlord yearly.” (Woodfall, 111.)

The rent reserved to the zemindar need not be a money rent; it may be a portion of the crops in specie, or apparently anything else having a money value. In Coke upon Littleton 142a. of Rent Service, it is said: “The rent may as well

be in delivery of hens, capons, roses, spurs, bows, &c., or any other profit that lies in render, office, attendance, and such like, as in the payment of money—(*Peezeeroodin v. Madhu Sudan*, 2 W. R. 15, F. B.; W. R. F. B., 48; 1 Hay, 350; Marshall, 151; Indian Appeals, 433; 9 B. L. R., 123).

For the purposes of Acts VIII of 1869 B.C. and X of 1859 rent comes within the terms "property," and "moveable property"—(*Mohes Chunder v. Gooroo Persad*, 13 W. R., 401).

Rent in Act XVIII of 1873 "means whatever is to be paid, delivered or rendered by a tenant on account of his holding, use or occupation of land." In the draft bill of the

Rent Commission, the definition was rather profuse and defective. "The definition of rent," they reported, "presented some difficulty as opinions differ about what rent really is in India. We have endeavoured to express what we hope will be accepted as a reasonable view of the subject, and have defined rent to be 'whatever is payable or deliverable by a tenure-holder, under-tenure-holder, or occupancy raiyat to the proprietor, tenure-holder or under-tenure-holder, possessing the interest immediately superior in the land held by him, in recognition and satisfaction of such superior interest; or whatever is payable or deliverable as a return or compensation for the use or occupation of land or for any rights of pasturage, forest rights, fisheries, or the like.'" In Field's Digest of the Rent Law, *rent* was defined to mean "whatever is periodically payable or deliverable, as a return or compensation for a tenure or under-tenure, or for the use or occupation of land, or for any rights of pasturage, forest rights, fisheries or the like."

Lawfully payable or deliverable:—It will be observed that, while under the definition of Act XVIII of 1873, service rendered for use or occupation of land would be rent, under the definition of this Act it would not be so. Whatever is *payable or deliverable* is rent under this Act, but not whatever is *rendered*. This, however, would not place the holder of a service-tenure beyond the category of a tenant, because in each case the service required would be a matter of special contract in lieu of rent, and the words "but for a special contract would be liable to pay rent" in the definition of a tenant would apply to the holder of a service-tenure. Where, however, the original donee of a service-tenure ceases to do any service and pays in lieu a rent which his descendants continue to pay, the conditions of the tenure becomes altered from service to rent—(*Rajah Mohendra v. Jokhu Sing*, 19 W. R., 211 P.C.). The mere fact of long possession of a service-tenure or no rent at all, again does not give the holder any exemption from the payment when the service is no longer required or performed—(*Chundernath v. Bheen Sirdar*, W. R. Sp., Act X, 37). The distinction between "lawfully payable" and "lawfully recoverable" in the sense in which some commentators have drawn it is absurd. The word "payable" is only a correlative term to the word "recoverable," and whatever is payable by the tenant is recoverable by the landlord. But the converse case is not true; whatever is recoverable by the landlord may not be rent under this definition; for instance, *dik* cess, by contract. The true distinction therefore is whatever is payable by the tenant to the landlord for use and occupation of land is 'rent' and recoverable by the landlord under this Act, but whatever is recoverable by the landlord may not be 'rent' because it does not fall under the terms of this definition and is therefore not recoverable under the Act as rent.

The obligation for payment or delivery must arise out of a lawful action.

Lawfully.

Whatever is therefore payable as damage, i. e., for torts or unlawful actions, would not be rent. Hence it has been held that a suit for damage for the occupation of land by the defendant without the consent of the plaintiff is not a suit for rent cognizable by the

Revenue Court—(*Bhoobun Mohun v. Chander Nath*, 17 W. R., 69). So a suit which is in reality a claim for compensation for use and occupation of lands, cannot be described as a suit for arrears of rent—(*Kishen Gopal v. Burnes*, 1 L. R., 4 Cal., 374). "It appears," observed Markby, J., in this case, "that the raiyat has in addition to the original 67 bighas and odd cottas of land, of which the nugdi portion of the tenure consisted, taken into his possession two bighas more. Now in suing the tenant in respect of the rent of these two bighas, the landlord does not treat these two bighas as an addition to the major tenur. held upon the same terms as the rest of the nugdi tenure. He chooses to place on these two bighas a rent of Rs. 5, which is more than the rate at which the nugdi tenure is assessed. It is not shown that that rent has ever been paid by the tenant. The suit, therefore, in reality, so far as it relates to these two bighas is a suit to recover compensation for the use and occupation of those two bighas." Damages on account of wanton destruction of trees, though stipulated for in a kabuliyat cannot be claimed as rent—(*Nobo Tarini v. Gray*, 11 W. R., 7). But a stipula-

Deliverable rent in tion to supply a number of mangoes yearly is one to pay kind. part of the rent in kind, and the value of the mangoes is realisable as rent under the Rent Law—*Id.* So also under Act VIII of 1869 B.C.—(*Mullik Annant v. Ukloo*, 25 W. R., 140). A suit for arrears of rent of the description known as *phulkur*, being of a nature cognizable by a Revenue Court when Act X of 1856 was in force, can be brought before a Munsiff under Act VIII; a Small Cause Court has no jurisdiction to try it—(*Gobinda v. Gokul Bhukut*, 23 W. R., 304). The Rent Law applies, where rent is reserved in kind, just the same in the case of suits for rent in money;—(*Bhoobun Sandari v. Nawab Abdin*, 8 W. R., 393.) Certain payments which are not so much in the nature of cesses as of rent in kind and which were uniform, and had been paid by the raiyat from the beginning according to local custom, were held not to be illegal cesses but rent—(*Judhnarawan v. Juggeswar Doyal*, 24 W. R., 4).

Abwabs are, however, unlawful (see section 74, post and notes), and cannot be recovered as rent. If a raiyat, for the purpose of preventing disputes with his landlord, agrees to make a definite payment to the landlord in addition to his rent, the additional payment cannot be treated as an illegal cess, for section 3, Regulation V of 1812 rather favours such arrangements and provides for their being enforced—(*Serajunge Jute Company, Ltd. v. Toraldee Akooml*, 25 W. R. 252.) So a *purabee* was held not to be in the nature of an abwab or illegal cess, but as part of the legal consideration for a contract—(*Juggodish v. Tarikulha Sircar*, 24 W. R., 90.) So if a zemindar demand a cess over and above the original rent, and the raiyat consents and contracts to pay it, this demand and the old rent form a new rent lawfully claimable under the contract—(*Jeealoolah v. Jugodindra Narain*, 22 W. R., 12). It is doubtful whether these decisions will hold good on the present law. See the whole question discussed under section 74. Where simultaneously with the execution of a pottah, and the giving of a kabuliyat by the defendant, the defendant entered into a separate agreement by which he undertook to deliver to the plaintiff a certain number of goats, certain quantities of straw and other articles yearly, it was held that this was a special agreement wholly unconnected with the question of rent, and a suit for breach of the agreement was cognisable by the Small Cause Court—(*Bhoobun Sandari v. Nawab Abdin*, 8 W. R., 393). But if not barred by section 74, are not these articles deliverable for use and occupation of land and therefore rent?

By a tenant to his landlord :—Rent presupposes the relation of landlord and tenant. The thing payable or deliverable must be paid or delivered by the

tenant to his landlord. A suit for *dasturat* is not, therefore, a suit for rent and not cognizable under Act VIII of 1869 B.C.—(Ram Charan v. Torita Churn, 18 W. R., 343). In this case Kemp, J., delivered the following judgment: “The first point for decision is whether *dasturat* is rent or not. * * * * *Dasturat* is explained in Wilson’s Glossary to be an ‘allowance for expenses of collections granted by the Mahomedan Government.’ The decision of the late Sudder Court, which was referred to during the argument, is to be found at page 504 of the Decisions of 1854. The Court in a judgment of a few lines held that *dasturat* was not a cess, such as is prohibited by section 55 of Regulation VIII of 1793, but that the term ‘seemed to imply a reservation of a certain annual payment by the purchaser of the talook to the seller, the original proprietor of a small sum.’ The Court did not hold that *dasturat* was rent. The letter of the Sader Board of Revenue shows that *dasturat* was ‘never paid.’ They were of opinion that the term seemed to imply a certain annual payment by the purchaser to the seller, the original proprietor of a small sum. * * * * We concur with the Judge in holding that the relation of landlord and tenant as between the plaintiff and defendants is not made out, and that these suits are not cognizable under Act VIII of 1869 B.C.” A claim for *hug-i-zemindari* is not a claim for rent—(Jowahur Laul v. Sultan Ali, 12 W. R., 214.) By a deed between A and B, B purchased from A, fractional share of a pergunnah, the Government revenue payable on which was Rs. 43-12, and it was stipulated that B was to apply to the Collector for mutation; and that until the mutation was completed, he should pay the above quota of the Government revenue through A; and that after mutation, the relation between A and B should be an independent one. *Held*, that the relation of landlord and tenant was not created by the deed, and the quota of revenue payable by B under the deed is not rent—(Golab Chandra Roy, 16th September, 1862). Though, as a general rule, a mortgagor and mortgagee do not stand in the relation of landlord and tenant, yet when the mortgagee executes a lease, in favour of the mortgagor stipulating to pay him a certain amount annually as rent, he is, as far as the payment of that sum is concerned, a tenant of the mortgagor, and must be sued for any arrears of such rent under Act X of 1859—(Bishen Rup Dutt, 30th June, 1864; Sp. W. R., Act X, 93). B obtained a lease of certain lands from A agreeing thereunder to pay to A certain rental for the land, and also a sum of Rs. 183, 6 annas 3 pies yearly to A’s superior landlord, obtaining a receipt therefore. A sues B for the rent due to himself, and for the sum due to his superior landlord. *Held* that A was entitled to recover the sum due to his superior landlord as damages for breach of the contract and that the amount of such damages ought not to be taken as nominal but should be assessed on the footing of the sum for which A might become liable to his superior landlord. The Court observed that ‘rent cannot be made payable as such to a third person (Woodfall, 12th Ed., 355; Little, s. 346)’—(Rutnessur v. Harish Chunder, F. L. R. 11 Cal., 221).

On account of the use or occupation of land :—The nature of the ‘use’ or

Land.

“occupation” or of ‘land’ has not been defined. Obviously, however, the use or occupation must be confined to the class of tenants specified in section 4 *post*, and not to any other classes of tenants, and the land must be such as held by a tenure-holder or raiyat or under-tenure-holder or under-raiyat. “Land” in this section does not moreover include homestead land, or pasturage, or forest rights, or fisheries, or the like; sections 184 and 193 *post* provide for such classes of land. If ‘rent’ as defined in this section included rent for pasturage, &c., or for homestead, sections

182 and 193 would have been redundant. Section 1 of Act V of 1867 (B.C.) declares that "in all Acts passed by the Lieutenant-Governor of Bengal after its commencement, the word 'land' shall include houses and buildings and corporeal hereditaments and tenements of any tenure, unless where there are words to exclude houses and buildings or to restrict the meaning to tenements of some particular tenure." The Bengal Tenancy Act being an Act of the Governor-General in Council, this definition will not suit it; and the General Clauses' Act I of 1868 does not define land, though immovable property is defined, which "includes lands, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth." The draft Bill of the Rent Commission, however, gave the following definition: "Land includes woods and waters thereupon: when applied to land cultivated or held by a raiyat, it means land used or intended to be used for agricultural or horticultural purposes, or the like. In Chapter XVIII it means (a) tenures, under-tenures and holdings; (b) land used or let to be used for agriculture, horticulture, pasture or other similar purposes, or for dwelling houses, manufactures or other similar buildings; and (c) rights of pasturage, forest rights, fisheries, and the like. *Explanation*—Bastu or homestead land is land used for agricultural purposes when it is occupied by a raiyat, and together with the land cultivated by such raiyat forms a single holding." The definition was abandoned.

The nature of the use or occupation, or the nature of the land being not defined, unless the construction based upon sections 182 and 193 (referred to above) be adopted, the use or occupation of land by erecting a house thereupon, or by holding a market, or by digging a tank, would clearly fall under the definition here given. But the use of the house itself, or the tank itself, can only be by a straining of the language considered as use or occupation of land. That is, the rent of the *site* of the house or tank, the erection or digging of which are only different modes of using the *land* where they are situate, would be *rent* under this definition, but not the rent of the house itself, as in the case of a lodger or the rent of the tank itself, as in the case of a fisherman who rents it for the purpose of fishing. The question of the jurisdiction of the Small Cause Court or the Ordinary Civil Court will, however, depend not upon this definition but upon clause (4), proviso of section 6 of Act XI of 1865, and section 23, cl. 4 of Act X of 1859. The new Small Cause Court Act has, however, made a change on this point. (See this point discussed under sections 144 and 182 *post*).

Land under the old Rent Law and Rent for it.

Section 23 of Act X of 1859 ran as follows:—

"XXIII (1.) All suits for the delivery of pottahs or kabuliyaats, or for the determination of the rates of rent at which such pottahs or kabuliyaats are to be delivered;

(2.) All suits for damages on account of the illegal exaction of rent or of any unauthorized cess or import, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress;

(3.) All complaints of excessive demand of rent, and all claims to abatement of rent;

(4.) All suits for arrears of rent due on account of land either kherajee or lakhrajee, or on account of any rights of pasturage, forest right, fisheries, or the like;

(5.) All suits to eject any raiyat, or to cancel any lease on account of the non-payment of arrear of rent, or on account of a breach of the conditions of any contract by which a raiyat may be liable to ejection, or a lease may be liable to be cancelled;

(6.) All suits to recover occupancy or possession of any land, farm or tenure, from which a raiyat, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same;

(7.) All suits arising out of the exercise of the powers of distress conferred on zemindars and others by sections CXII and CXIV of this Act, or out of any Acts done under the colour of the exercise of the said power as hereinafter particularly provided;

Shall be cognizable by the Collectors of land revenue, and shall be tried under the provisions of this Act, and except in the way of appeal as provided in this Act, shall not be cognizable in any other Court, or by any other officer, or in any other manner."

It will appear from clause 4 of this section what sort of rent was intended to be within the jurisdiction of the Collector under Act X of 1859. That clause may also throw some light upon the term 'rent' as defined by the Bengal Tenancy Act. Under Act X of 1859 it has been held that a suit for arrears of

Contradictory decisions on the point under the old law.

house rent and for ejectment of the tenant from the house is not a suit cognizable by Revenue authorities. House rent includes the rent of the ground upon which the house stands, but as the items are not separable the claim cannot be heard—(Nawab Haji Mohammad Khan Kuzulbash, Sadar Dewany Reports, 1862, of the 28th June). But the mere existence of a house on land does not remove a suit for the rent of the land from the Collector's jurisdiction—(Shauik Nasarali, 5th July 1864; Sp. W. R., Act X, 102). This will explain the distinction between the use of the site of the house and of the house—upon which we have commented above. A suit for arrears of rent due on account of an indigo factory is not cognizable under clause 4 of section 23, Act X of 1859—(Adwaitya Chandra Pal, 1st April 1863). A suit for the right to erect *golahs* at certain ghats on the land, and also to collect certain duties from persons who used these ghats and *golahs* and for other purposes, was held not cognizable under this clause—(Mr. James Forlong, 17th November 1862). The terms of this clause are wide enough to extend the jurisdiction of the Collector in suits for rent to cases of tenancies not strictly agricultural, provided the subject of the lease is land, and the rent issues from the land, and is due on account of land for the use of the land, whatever may be the purpose for which the surface of the land is held. When the land is leased for the erection of *golahs*, although the lease includes the right to levy *golah* duties, a suit will lie in the Collector's Court for rent under the lease—(Robert Watson & Co., 6th April 1864; Sp. W. R., Act X, 46). The Civil Court has jurisdiction in a suit for the rent of a house and the land surrounding it—(Benia Das De, 26th November 1884). But the erection of a building upon the land after the lease does not bar the Collector's jurisdiction—(Tari Prosad Ghose, 9th January 1865). The erection of buildings, except under a building lease, does not bar enhancement—(Saroda Sundari Cowdrani, 9th January 1865). A suit for arrears of rent on account of a market is one within the jurisdiction of the Collector under this clause—(Gyantri Devia, 7th June 1864; Sp. W. R., Act X, 78). A suit for rent on a lease of tolls arising from a canal or river navigation does not lie to the Collector under this clause—(H. W. Garland, 11th August 1864). A suit for rent of a ferry is not maintainable in Revenue Courts—(Mr. James Forlong, 16th May 1863). In addition to these decisions, there are other decisions to the same effect, viz., that a suit for rent can be brought upon this Act for arrears of rent due on account of land used for building purposes—(Bipro Das v. Wollen, 1 W. R., 223; Tariny Persad v. Bengal I. Company, 2 W. R., Act X, 9; Mathura Nath v. Campbell, 15 W. R., 463; Bina Nath v. Gopeenath, 17 W. R., 183.) It has, however, been latterly held,

per contra, that the word *land* in Act X, 1859, or Act VIII of 1869 B.C. means agricultural or horticultural land, and that the provisions of the Rent Law do not apply to a suit for arrears of rent, where the land is occupied for the purpose of building and not agriculturally—(In the matter of Bromoboyee Bewa, 14 W. R., 252, per L. S. Jackson, J.). Lands used for other purposes than for purposes of agriculture and horticulture are not the subject of legislation in Act X of 1859 or Act VIII of 1869 B.C.—(Stalkart v. Mudun Mohan, 17 W. R., 441; 9 B. L. R., 97; Ramdhun v. Haradhan, 12 W. R., 404; Kalee Mohan v. Kalee Kisto, 11 W. R., 183; 2 B. L. R. App. 39; Church v. Ram-Tanoo, Id., 547, 9 B. L. R. 101; Ranee Swarnamayi v. Blumhardt, 9 W. R., 151; Purna Chunder v. Sadut Ali, 2 C. L. R.)

• These contradictory decisions led to a Full Bench decision in Ranee Durga

How settled.

Sundari v. Bibi Omedunnessa, 18 W. R., 235, F. B.; 17 W. R., 151. The Court held that lands used for building purposes were not the subject of legislation in Act X of 1859 or Act VIII B.C. of 1869. Couch, G.J. observed: "But I think that in determining what is the meaning of 'land' and 'holding land' in Act X, we must look at all the provisions of the Act. It may be assumed that it was not intended that one part of it should apply to one kind of land, and another part to another, and that land in section 23 should have a different meaning from what it has in other sections. The Deputy Collector says with truth that it is extremely difficult to apply to bazar lands occupied merely as building ground, the provisions of section 17 which are manifestly intended to be applied to the rent of lands used for agricultural purposes. And these are not the only provisions in the Act of which that may be said. Section 112 and the following sections can only apply to land used for cultivation. The intention of the Legislature is to be deduced from the whole Act, and a construction which makes the whole of it consistent to be preferred. I think this is the ground of the decisions in this Court that lands used for building purposes are not liable to enhancement under Act X of 1859." It is worth while to give Mr. Justice Dwarkanath Mitter's opinion on the point, as expressed in Ranee Durga Sundari Dasi v. Bibi Omedunnessa, 17 W. R., 151. Quoting clause 4 of section 23, he observed: "The present suit is, as I have explained above, a suit for arrears of rent '*due on account of land*.' That the land is occupied by a building appears to me to be of no consequence whatever. It is nevertheless '*land*' exactly in the same sense, as it would have been, if it had been cultivated with indigo or paddy: and as the rent claimed is alleged to have issued from the land and not from the building which stands upon it, I am unable to see how it can be held that the suit was brought in a wrong Court, when the Legislature says in so many terms that *all suits for arrears of rent due on account of land shall be brought in the Collector's Court, and in no other*. No portion of the rent sued for is, or is even alleged to be, due on account of the building; for that building is, as I have already shown, the property of the defendant, and as such not subject to the payment of any rent to the plaintiff. Nor can the fact that the arrears sued for are claimed at enhanced rates affect the character of the suit in any way whatever. It is to all intents and purposes a suit for arrears of rent as it is in name; and as it is also a suit for arrears of rent '*due on account of land*,' it seems to be beyond all question that it is capable of satisfying all the conditions required by clause 4, section 23 of Act X of 1859. That clause, it should be borne in mind, applies to suits for arrears of rent not only against raiyats, but against all classes of under-tenants. This point has been settled in the case of Dhunput Sing v. Goomun Sing, 9 W. R., 3. That was a suit for arrears of rent at enhanced rates against a quasi-talukdar holding an intermediate position between the proprietor and the raiyats, and an objection was

taken that the Revenue Court in which it was brought had no jurisdiction to try it. Their Lordships, however, overruled the objection on the ground that the clause above referred to contains provisions for all classes of under-tenants. It has been argued that as the land is not used for agricultural or horticultural purposes, this suit is not cognizable by the Revenue Court. I confess that I am at a loss to find out any satisfactory reason to justify such a distinction. There is nothing whatever in the words of the Legislature to support it. On the contrary, as land must retain its character as *land*, whether it is used for agricultural or for building purposes, the contention seems to be directly in the teeth of the plain and obvious meaning of these words. Why then are we to dismiss this suit on the ground of such a distinction? A suit for arrears of rent due on account of a piece of land occupied by a raiyat's homestead is clearly governed by clause 4, section 23, Act X of 1859, and there are many raiyats in this country who do not hold any lands other than those occupied by their homesteads. A putnidar who holds an entire pergunnah and never uses a single cottage of the lands comprised in his putni, for agricultural or horticultural purposes, would have been liable to be sued under this clause, if it had been still in force as law; and I see no reason therefore why the purpose for which the land is used should have anything to do with the jurisdiction conferred on the Revenue Courts by that clause. Whatever may be the true definition of the word 'raiayat' as used in Act X of 1859, it is by no means necessary that he should be an actual cultivator. Section 6 says distinctly that a raiyat who has 'held' land for twelve years consecutively, is entitled to a right of occupancy exactly in the same way as a raiyat who has 'cultivated' land for the same period. As clause 4, section 23, applies to all cases in which the subject matter of the lease is land, I do not see the slightest reason why the defendant in this case should be permitted to object to the jurisdiction of the Revenue Court, even though he may not be a raiyat within the meaning of the Act. The land for which the rent is claimed is, it is true, situated within a bazaar, and it is also true that it is occupied by a building and not used for horticultural or agricultural purposes. But it is nevertheless land in every sense of the term; and as the suit is therefore a suit for arrears of rent, due on account of land, it was instituted in the only Court in which it could have been instituted at the time. There is nothing whatever in the Act which says that the land should not be situated in a town or in the vicinity of a town; nor is there anything in it to give the slightest support to the contention that the land should be used for a particular purpose, or found in a particular condition at the time when the suit is brought before the Revenue Court can assume jurisdiction to try it. Suppose, for instance, that a raiyat cultivates his land with paddy for one year, and then erects a building upon it, or allows it to remain uncultivated in the next year. A suit for arrears of rent due for the first year would certainly be governed by clause 4, section 22, Act X of 1859, and I see no reason whatever why the same clause should not apply to a suit brought for the arrears of the next year."

Mr. Justice Mitter was, however, overruled in the Full Bench, and it has then been held that a suit for arrears of rent on account of land used for building purposes is cognizable by the Mofussil Courts of Small Causes—(Peary Bewa v. Nupoor, 19 W. R., 308; Gokul Chand v. Mosahroo, 21 W. R., 5.) In a suit for rent of land, where the principal subject of the entire occupation is *basu* land, the residue (if any) of the holding being merely subordinate, the Small Cause Court has jurisdiction. But when the principal subject is agricultural land, the building or buildings being mere accessories thereto, the Small Cause Court will have no jurisdiction—(Musst. Rance Chandewari v. Gheena Panday, 24 W. R., 182.) But a suit for arrears of rent at an enhanced rate in respect of land

situated in a town, and upon which either a house or shop stands, is not a suit for rent within the meaning of section 6, Act XI of 1865, and is maintainable in the Ordinary Civil Courts, and not in the Small Cause Court—(Joy Kishore v. Nubee Buxah, 17 W. R., 175). A suit for rent derivable by a lessor from tolls collected by the lessee from persons resorting to a *hat* is not cognizable by the Ordinary Civil Courts under the Rent Law, but by the Small Cause Court—(Savi v. Issur Chundra, 20 W. R., 146.)

For other decisions on the same point, see section 20 (*post*).

Recoverable under any enactment as rent:—These words refer to Road and Public Work Cesses payable under Act IX (B.C.) of 1880 (section 47), and Embankment Cess payable under Act II (B.C.) of 1882 (section 74) and Survey Cess payable under Act V (B.C.) of 1875 (section 38) Dāk Cess is not recoverable as rent under the Dāk Act (see Act XIV of 1866, and Act VIII of 1862 B.C.) but if there be a contract for its payment between the zemindar and any person holding under him, section 12 of Act VIII (B.C.) of 1862 saves it. Still the contract would not make the cess to be rent, and claim for it would be cognizable by the Small Cause Court. Moreover that section saves only a contract between the zemindar and an under-tenant, but not between an under-tenant or raiyat. As, however, Dāk Cess is not an *abwab*, section 74 of this Act will be no bar to its recovery, the ordinary laws of contract protecting it. See notes under section 74.

3. (6). “Pay,” “payable” and “payment” used with reference to rent, include “deliver,” “deliverable” and “delivery.”

This is taken from *Kissen Gopal Mawar v. Burnes*, I. L. R., 2 Cal., 374. “Now the word *rent* undoubtedly includes both rent in kind and rent in money. But the word *paid* does at first sight suggest rent reserved in money. But when we turn to section 2, Act VIII of 1869 (B.C.), it is clear from that, that the Legislature did not use the word *paid* in reference to rent reserved in money only, because in section 2, we find the expression, ‘if the rent is payable in kind,’ thereby clearly showing that the Legislature at any rate considered that the word *paid* or *payable* was a proper expression for the proportionate produce which have to be delivered in kind, or a *bhaoli* tenure,” *per* Markby, J.

3. (7). “Tenure” means the interest of a tenure-holder or an under-tenure-holder.

See notes under section 5 (*post*), and also the Introduction (*ante*).

3. (8). “Permanent tenure” means a tenure which is heritable and which is not held for a limited time.

Read with sections 11 and 10 of the Act and also with sections 12 to 17. Hence a permanent tenure is not only heritable but transferable under the Act. This, however, is not always the case, e.g., a *ghatwali* tenure is permanent but transferable. (See, however, section 181.) Besides section 11 gives only the incidents of a permanent tenure, while *heritableness* goes with its definition.

Taluk, what it means:—The word ‘taluk’ imports a permanent interest in land. “As to the meaning of the word taluk,” says Markby, J., “it has been said before, and we also say again, that *prima facie* the word ‘taluk’ does

import a permanent tenure, if there be nothing either in the surrounding circumstances, or in the instrument itself, which creates the interest to show that it was intended to be otherwise; and when we find that the chitta relating to this land describes the land as a taluk, we think, in the absence of evidence to the contrary, we ought to presume that that was a permanent interest. We must also bear in mind that that was a document drawn up under the provisions of clause 1, section 9, Regulation VII of 1822, and the revenue officer, who was responsible for that document, was bound to put a proper description of the tenure in the document, and he considered that he had sufficiently described the tenure when he called it a taluk. That document is by the express words of that section declared to be an evidence available for the purpose of proving the title of the persons claiming tenures in the lands in question"—(Krishto Chundra v. Meer Sufdur Ali, 22 W. R., 326). The word *taluk*, or correctly *talug*,

Derivation.

is derived from the Arabic word, '*alague*' which signifies 'to hang from, to depend upon; *alague* also means a leech, which hangs from the body to which it has attached itself, and has another quality said to have belonged also to the taluqdar, and means connexion and dependence. In Upper India, *taluk* was dependant upon, and subordinate to, the Sovereign. In Bengal, *taluk* was subordinate to the *zemindari* but not always. The larger *taluqdars* were *huzuri*, i. e., they were immediately under the Supreme Government to which they paid their revenue direct, while the smaller ones were *mukurari* or specified, i. e., in the sanad of the zemindars, through whom they paid their revenue. In the North-Western Provinces the taluqdar was superior and the zemindar inferior. The reverse was the case in Bengal: The taluqdar was subordinate to the zemindar, where any relation existed between them. Some large taluqdars indeed paid their revenue direct to Government and were independent of the zemindar, but in no case was the zemindar subordinate to the taluqdars. There are in the Lower Provinces of Bengal a variety of tenures held under the zemindars and known by different names, in different districts. See notes under sections 5 and 11 of the Act. The most important of these tenures are *talugs*. Some of these have existed from before the permanent settlement (see sections 6, 7 and 8 of Regulation VIII of 1793), and are known by the general term of *Shikimi* or dependent taluks. *Patni* taluks constitute another important class of subordinate tenures. See Regulation VIII of 1819 and notes. Talugs of both these classes are inheritable and transferable by sale or otherwise. Talugs and similar tenures created since the time of the permanent settlement and held immediately of the proprietors of estates may be protected by registration from avoidance by a sale for arrears of revenue. Taluks created since the permanent settlement are usually founded on the *patni* principle, and not on the principle of *shikmi* taluq.

Istemrari and Mukurari tenures.—They are tenures granted in perpetuity. *Mukurari* tenures are those granted at a fixed rent not liable to enhancement. "Generally speaking, however," says Mr. Field in his Introduction to the Regulations, "the two conditions are now found combined, and where the term is in perpetuity, the rent is fixed for ever. These tenures, though not called *talugs*, differ little in their incidents therefrom. They are transferable and inheritable, and may be protected by registration from the effects of a revenue-sale. Many tenures, the incidents of which were not exactly defined when they were created, have become *istembrari* and *mukurari* by custom instead of by legislation. Being allowed to descend from father to son without opposition, they have come to be regarded as *istembrari* more specially after one or two transfers and devolution by inheritance upon the heirs of the transferee. The law declares

that, where the rent has not been changed since the permanent settlement, it cannot be enhanced, and here also a statutory presumption has been brought in to facilitate the means of proof, and thus many tenures have become *mokurari* which were not so in their inception."

Article 18 of Mr. Field's Digest runs to the following effect:—

"Of tenures, some are transferable, others are non-transferable; some are heritable, others are non-heritable. A tenure may be made transferable or heritable

(1) by express provision of law (as *patni* tenures by Regulation VIII of 1819, section 3, clause 1); or

(2) by contract (L. R. 4 I. A., 223; Marsh, 330; 9 W. R., 65; 19 W. R., 141); or

(3) by custom; or

(4) by the course of dealing therewith (1 W. R., 153; 10 Moo. In. Ap., 191; 11 Moo. In. Ap., 433; 12 Moo. In. Ap., 263; 14 Moo. In. Ap., 247; L. R., 4 I. A., 223; 24 W. R., 176; 7 B. L. R., 211).

"Whether any particular tenure has, or has not been made transferable or heritable by contract or custom, or the course of dealing therewith, is a question to be decided upon relevant evidence by the Court having jurisdiction. Explanation I.—A tenure may be transferable without being *mokurari* or held at a fixed rent: and a tenure may be *mokurari* or held at a fixed rent without being transferable (1 W. R., 5.) Explanation II.—A tenure may be transferable without being heritable: and a tenure may be heritable without being transferable. (Marsh, 119; Reg. XXIX of 1814, s. 2.) Explanation III.—A tenure may be *istemrari* or permanent without being transferable: and a tenure may be transferable without being *istemrari* (Marsh, 117; 6 B. L. R., 652.) Explanation IV.—A *mokurari istemrari* tenure shall be presumed to be heritable." (3 B. L. R., 226; 5 B. L. R., 652).

Permanent by Law:—As *patni* tenures under Regulations VIII of 1819, section 3, cl. I. See also the Introduction *ante*, and notes under sections 5 and 6 *post*.

Permanent by Contract or course of dealing.—A *mukarari istemrari* holding is a perpetual (hereditary) holding at a fixed *jumma*—(Munrunjun v. Rajah Lilanund, 3 W. R., 84; 4 R. J. P. J., 461). *Ghatwalli* tenures are perpetual holdings subject to the condition of service—(Rajah Leelanund v. Thakoor Munrunjun, 5 W. R., 101). In this decision the meaning of the term *istemrari* was discussed. "I think," observes G. Campbell, J., "that there can be no doubt whatever that the proper and correct meaning of the word '*istemrari*' is 'perpetual.' The decision of 1853, page 654, on which the petitioners rely, says that in 'lexicography' that is the meaning; so does Wilson's Glossary put forward by petitioners. Still, however clear the meaning of the word, and however strong my own opinion that, in the ordinary transactions of the country, the term *istemrari* is understood to mean perpetual for ever, and not for life only, it might have required consideration if it had been shown to be the settled law of the Courts, that the term *istemrari* is held to be as artificial and customary, as distinguished from its lexicographical meaning, and so to import a life tenure only, and not a perpetual tenure. Now the whole, that is to be said on this point, seems to be contained in the *résumé* in the judgment of 1853 (Musst. Amerunnessa, appellant) relied on by the petitioners. From this it appears that there had been two decisions in which *istemrari mokurari* grants had been set aside by a majority as not hereditary, and another case in which the judges unanimously held the other way, considering that the intent of the parties was to create by

the disputed words a perpetual hereditary holding. It was also noted that in the Regulations of 1793 and 1815, the words were taken to import perpetuity for ever. The result was that in 1853, the judges did not think it necessary to decide that the words always meant either 'perpetual for ever,' or 'for life' only, but deemed it most proper to look to the true intent and meaning of the parties as shown both by their acts as well as their writings, and the case was decided on that evidence. I should probably be by no means disposed to dissent from such a view, and if we had decided this case on the ground that, *istemrari* meaning perpetual, no evidence to show that the parties did not use it in that sense was to be admitted, I should on the decision of 1853 have admitted a review. But we by no means held any thing of the kind. We simply remarked on the use of the word *istemrari* as among other things, tending to show the status of the ghatwals in the last century, and we translated the word '*perpetual*' which a reference to any dictionary shows to be the correct translation. Richardson gives *istemrari* (from *marra*) proceeding, going on, preserving, being rendered perpetual (rent), and *istemrari*, 'perpetual.' This case went up in appeal to the Privy Council, and their Lordships observed: "The words *mokurari istemrari* are used, and although it may be doubtful whether they mean permanent during the life of the person to whom they were granted, or permanent as regards hereditary descent, their Lordships are of opinion that, coupling those words with the usage, the tenures were hereditary"—(13 B. L. R., 124). So it has been held that in the absence of any evidence to show that a grant was for life only, the words '*mokurari istemrari*' are sufficient to make it hereditary—(Lukhoo Koer v. Rai Hari Krisna, 12 W. R., 3; 3 B. L. R., A. C., 226). The use of the word "*istemrari*" in describing a potta shows an intention that the lease shall be perpetual and implies its hereditary character—(Karoonaakur Mahottee v. Niladhiro Chowdhry, 14 W. R., 107; 5 B. L. R., 652). And the use of any particular form of words is not necessary to convey *mokurari mouroasi* right—(Umooda Prosad v. Chundra Sekhur, 7 W. R., 394; Asfur Mundle v. Ameen Mundle, 8 W. R., 502; Koylash Chunderv. Heera Lal Seal, 10 W. R., 403). "The word *mokurari*," says Mr. Justice Glover in the first of these cases, "does not occur in the potta, but it is not absolutely necessary that any particular form of words should be used in conveying rights to hold at fixed rates, and taking the nature of the lease, *i. e.*, for building purposes, the position of the parties, and the circumstances under which the contract was made, into consideration, we cannot say that the Judge has placed on the potta a construction that it cannot legally bear." Similarly their Lordships, the Privy Council Judges, observed in the case of Baboo Dhunput v. Gooman, 9 W. R., P. C., 3: "Their Lordships cannot accede to the argument that potta must *prima facie* be assumed to give a hereditary interest, though it contains no words of inheritance. They do not think that the case cited from Morton's Decisions, still less that of Freeman v. Farlie, is any authority for such a proposition. Potta, as may be seen by referring only to Act X of 1859, is a generic term, which embraces every kind of engagement between a zemindar and his under-tenants or raiyats. Nor can it be disputed that the expressions here wanting are ordinarily used in the grant of a perpetual tenure. * * * But the facts already stated afford incontestable proof that, ever since the death of Agham Sing, the hereditary character of his subtenure has been recognised by the successive zemindars. There is also evidence which is not contradicted that some of them have recognised its transferable nature. This evidence affords ample grounds for inferring either that the tenure was always intended to be hereditary, although not so expressed in the potta, or that if the original grant were limited, as was suggested, to the life of Agham Sing, his tenure has, by some subsequent grant, become hereditary and transfer-

able. And upon the proof here given of long uninterrupted enjoyment, accompanied by the recognition of the hereditary and transferable character, it is almost impossible to suppose that a suit by the zemindar in the Civil Court to disturb the possession of the respondent could not be successfully resisted. The case of *Joba Sing* (4 S. D. A. Rep., 271) is an authority for the proposition that evidence of this kind will supply the want of the words 'from generation to generation' in the *potta*, which is the foundation of such a title." Where the lease contained no words importing an hereditary character and simply said *tamyad mokurari*, it was held to have the effect of being hereditary on the ground that the period of its continuance was not dependent on the life of any party, whether lessor or lessee, but on the continuance of the superior tenure—(*Babu Lekhraj v. Kanhya Sing*, 17 W. R., 484). "Now with regard to the lease," observed Loch, J., "we find that there is no mention therein of the period for which Choonee Lal's *mokurari* was to exist. He speaks of the possibility of the Government making a fresh settlement with him at an enhanced rent. He does not apparently contemplate such a thing as a fresh settlement being made with any other person; and having this belief in his mind, he lets the land to Nirput Sing in *ticca*, which *ticca* is to last as long as his *mokurari* lasts. I think no valid objection can be raised as to the hereditary nature of this lease merely from its being called a *ticca*, or from its comprising terms which are in use in ordinary *ticcas*, such, for instance, as a prohibition to cut trees, as a power to the lessor to re-enter on failure of payment of rent, as the prohibition for the resumption of rent-free lands, &c., for such terms are common to most leases, and their introduction cannot, I think, be said to indicate that the lease was merely for a term of years. The terms are used for the protection of the property and the rights of the lessor. No term is fixed in the lease,—so long as the *mokurari* lasts, so long is the *ticca* to last. No word, such as *mourasi*, is to be found in the lease. * * * But we think on a full consideration of the lease that, though it contains no word importing an hereditary character, yet it has the effect of being hereditary, for the period of its continuance is not dependent on the life of any party whether lessor or lessee, but on the continuance of the superior tenure." Compare 19 W. R., 141 (P. C.). It has been, on the other hand, held that where there are no words in a lease extending its provisions to other parties beyond the lessee, its terms must be interpreted as applicable to the lessee only, unless the Court is able, from the conduct of the parties and the surrounding circumstances, to come to a different conclusion—(*Lekhraj v. Kanhya Sing*, 14 W. R., 262, cited above). Where a lease contains a condition whereby the lessor agrees not to put an end to the *mokurari* tenure of his lessee except on the occurrence of a fresh settlement on the part of the Government, it does not follow that the lessor intends to constitute a hereditary lease if no Government settlement takes place—*Id.* In such a case a lessor's right to re-enter arises on the death of the lessee, but if the representatives of the lessee have been allowed to hold over by the heirs of the lessor to whom they have paid rent, the cause of action to a purchaser of the lessor's rights and interests arises on the refusal of the lessee's representative to permit them to re-enter."—*Id.*

This case went up in appeal to the Privy Council, and their Lordships held that the rule of construction that a grant made to a man for an indefinite term enures only for the life of the grantee and passes no interest to his heirs, does not apply in cases where the term can be definitely ascertained by reference to the interest which the grantor himself has in the property, and which the grant purports to convey—I. L. R., 3 Cal., 210.

In 1798 a *mokurari potta* of a portion of a zemindari was granted to A at a consolidated *jama* of Rs. 6 for the term of four years, and an uniform rent of

Rs. 25 from the expiration of that period, to be paid year after year. The potta provided that the mokuridar should make improvements; that profits arising therefrom should belong to him and not to the grantor; and that he should not dispose of any portion of the land granted without the permission of the grantor. No words of inheritance were used in the grant. The grantee died in 1875, when the heirs of the grantor sued to recover possession of the estate from the heirs and assigns of A. The defendants contended that the grant was transferable and hereditary, that A, his heirs and assigns, were entitled to it in perpetuity. It was held that the grant was for the life of A only and not in perpetuity, and that the use of the word mokurari alone in a lease raises no presumption that the tenure was intended to be hereditary, and therefore in order to decide whether a mokurari lease is hereditary, the Court must consider the other terms of the instrument under which it is granted, the circumstances under which it was made, and the intention of the parties—(Sheo Persad Sing v. Kali Das Sing, I. L. R., 5 Cal., 543, and in appeal, I. L. R., 8 Cal., 664).

The words istemrari mokurari in potta granting land do not of themselves denote that the estate granted is an estate of inheritance. Not that such an estate cannot be so granted unless in addition to the above words, such expressions as "ba farzandan" or "naslan bad naslan," or similar terms are used. Without the latter, the other terms of the instrument, the circumstances under which it has been made, or the conduct of the parties, may show the intention with sufficient certainty to enable the Courts to pronounce the grant to be perpetual; the above words not being inconsistent therewith, though not themselves imparting it. *Held*, accordingly that where the words "mokurari istemrari" were used in connection with a grant in a potta (as it was also held in another case where the instrument was termed "mokurari jara potta") that the question was whether the intention of the parties that the grant should be perpetual had, or had not, been shown with sufficient certainty in any other way, *e. g.* by the other terms, by the objects, or circumstances of the grant or by the acts of the parties; and held that in the present case the intention was not shown.—(Tulshi Pershad v. Ram Narain, I. L. R., 12 Cal., 117).

Parties holding a permanent settlement from the Government cannot question the validity of a mokurari potta previously granted by themselves when they hold the property under a temporary settlement—(Kazi Abdool Manna v. Baroda Kant Banerji, 15 W. R., 394). The effect of a *solenama* confirming the rent of a tenure on the part of the manager of ancestral property, and agreeing that it shall not be enhanced, was held to create a *mourasi mokurari* tenure at a fixed rent—(Bhoobun Mohini v. Dhonaye Karigun, 15 W. R., 431).

Alienations made by Hindu widows of shares of an estate held as a hereditary mokurari tenure can only be contested by reversionary heirs and other persons having some interest in the estate; it is not open to the zemindar or superior landlord to object to such alienations. If the reversionary heirs make no arrangement for the due payment of the mokurari rent, the only right which the zemindar has is to sue them for arrears and then to cause the sale of the tenure, if necessary, in execution of decree, but not to take khas possession of it by force—(Ramdhun Shaha v. Rajah Raj Kisto Sing Bahadur, 18 W. R. 406). When a party who makes a mokurari grant has enough in him to feed that grant, *i. e.*, to make it substantial and valid, he cannot in a Court of equity be allowed afterwards to deny its efficacy—(Syed Ameer Ali v. Heera Sing, 20 W. R., 291). So a mokuridar, who has got his lease from the members of a joint Hindu family who are in actual possession and managing the joint property, cannot be rejected or interfered with by another member, not in possession, unless it can be shown that he has acted dishonestly—(Poshun Ram v. Bhowanee Deen, 24 W. R. 318).

Where a Hindu father created a *mokurari* tenure within his *zemindari* in favour of his illegitimate daughter by a Mahomedan lady, and the lawful widows of the father sought to resume the tenure on the death of the illegitimate daughter without heirs, it was held that the *mokurari* tenure granted in perpetuity could not be resumed—(*Mirza Himmud Bēhadoor v. Rani Surat Koor*, 15 W. R., 549.) This case went up in appeal to the Privy Council, and their Lordships said: "The grant was clearly intended to create an absolute and hereditary *mokurari* tenure inasmuch as it contains the essential words, 'generation to generation,' which in documents of that kind have always been considered to have that effect; and their Lordships do not find in the particular document any special terms which would distinguish it from a grant of an ordinary *mokurari istemrari* tenure. * * * It has been argued, however, that this *mokurari* not being an independent *zemindari*, but being carved out of a *zemindari*, stands upon a peculiar footing, and that, upon the failure of heirs, the *zemindar* takes by right of reversion, or, if not strictly by right of reversion, that the tenure escheats to him as the superior lord rather than to the Crown. The *mokurari* was clearly an absolute interest. It was also an alienable interest. It might have been seized and sold, as Mr. Doyne has shown, under Act X of 1859, even in a suit for rent. It could not have been forfeited for the non-payment of rent, for in such a case the *zemindar* could only have caused it to be seized, put up for sale, and sold to the highest bidder. It is, therefore, property which, like that in the case above cited, might have passed to any purchaser, whatever his nationality, or by whatever law he was to be governed. It cannot, their Lordships think, be successfully argued that, having so passed, the estate would have determined upon the death of Shurfoonnessa (supposing it had been sold in her lifetime) without heirs; for the grant contains no provision for the lessee of the estate created in such event. There seems therefore to be no ground for saying that the lands have reverted in the proper sense of the term to the *zemindar*; and the only question is, whether, on the failure of heirs of the last possession, he is entitled to take a tenure subordinate to and carved out of his *zemindari* by escheat. Their Lordships are of opinion that there is no authority upon which the power of taking by escheat can be attributed to the *zemindar*. The principles of English feudal law are clearly inapplicable to a Hindu *zemindar*. On the other hand it is clear that if the *zemindar* has no such right, the general right of the Crown subsists and must prevail"—(I. L. R., 1 Cal., 391.) Compare, however, the proviso of section 26 of this Act. In a suit for enhancement, the defendants (*inter alia*) pleaded a *mokurari potta* executed on the 9th October 1832, and purporting to bear the seal of one of the then *maliks* of the land and to be signed on behalf of all the *maliks* by it. It was held that the *potta*, though an authentic document, would not bind the *maliks* who did not affix their seals, nor those who claimed under them, and that it was not admissible in evidence, unless it was shown that A had a special or general authority to sign for them; and that the fact that the document was more than thirty years old gave rise to the presumption that the signature at the foot of it was in the handwriting of A, and the *potta* was executed by him—(*Ubilack Rai v. Dallial Rai*, I. L. R. 3 Cal., 557.)

For other notes see sections 5, and 10 to 14, *post*. See also section 182, notes, *post*.

Permanent by custom :—See section 183 and notes, *post*.

3. (9) "Holding" means a parcel or parcels of land held by a *raiya* and forming the subject of a separate tenancy.

See notes under section 5, *post*.

3. (10) "Village" means an area included in a village map of the revenue-survey within the same exterior boundary, or, where no such maps have been prepared, such area, as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

Where the village boundary may have been altered by decrees of the Civil Courts since the revenue survey was made, the boundary fixed by such Courts should be considered as the boundary fixed by revenue survey.

This definition has been framed, more having regard to several villages of the same zemindar than to several villages of rival proprietors. In a case of boundary dispute, a survey map, if not conclusive evidence, is evidence of an important character—(*Gudadhar v. Tara Chand*, 15 W. R., 3). In a suit by the lessee of a mouzah to recover possession of a piece of land from a lessee of an adjoining mouzah, both making title under one zemindar, where a survey had taken place at a time when both mouzahs to which respectively the land was claimed as belonging were in his possession, and when neither of the leases was in existence, it was held that the suit involved simply a question of boundary, and what was to be ascertained was, to which mouzah the land in dispute was found to belong at the time of the survey—(*Ameero Begum v. Gobin Pandey*, 15 W. R., 35). In a suit to recover possession of land contained in a certain Government resumed mehal, where defendant's plea was that the land had been purchased by him at an execution sale for arrears of rent as belonging to a jungle mehal, the lower Appellate Court refused defendant's application for a comparison with the maps and chittas made on the occasion of a boundary dispute between the zemindar and the Government, when it had been decided in a local enquiry that the land belonged not to the resumed mehal, but to the jungle mehal; it was held that the Subordinate Judge ought to have entertained the application, the evidence preferred having been the very best—(*Radha Charan v. Anund Sein*, 15 W. R. 444). In a boundary dispute, where the question relates to the situation of the pillars which formed the line, and the sketch map left by the officer who laid down the pillars affords room for ambiguity as to the direction of the line, it is of importance to see what has been the conduct of the parties since the line of pillars was decreed to be the boundary. If there has been a Government survey, the survey map must be taken as evidence; and if one of the parties has made a settlement according to the survey boundary, the fact must be taken into account unless explained away—(*Ranee Radha Chowdrain v. Giridhari*, 20 W. R., 242). In a boundary dispute a local investigation is absolutely necessary—(*Sevestre's Report*, 334. But *contra* in 17 W. R., 472). Great weight should be given to the reports of Deputy Collectors upon local investigations in dealing with boundary questions—(*Ram Gopal v. Gordon Stuart*, 17 W. R., 285). In *Protap Chundra Burooa v. Ranees Surnomoyi*, 19 W. R. 361 (P.C.), the Privy Council gave preference to a *thakbust* proceeding over the report of an Amin according to the *ratio decidendi* that, where the results of two local investigations are conflicting, the earlier was to be preferred upon the principle that, in the interval between the two investigations, the features of the locality might have changed, and evidence of possession might have been lost. A proprietor of land has no right to bring a suit to compel his neighbours to agree to a particular line of boundary being marked out between his lands and theirs, when he does not venture to say that they have by an overt act transgressed

that boundary—(*Amorunnessa Begum v. Gopal Sahoo*, 22 W. R., 134). The decision in a former suit as to the boundary line between two villages is conclusive only as to the land then in dispute, but not as regards the boundary line itself—(*Moni Roy v. Musst. Rajbangsi Koer* 25 W. R., 393).

Act I of 1847 provided for boundary demarcation of fields and estates of the North-Western Provinces. An award of the Collector under Act I of 1847, in respect of boundaries, is not final, even though undisturbed on appeal; nor is he competent to do more than demarcate by visible and tangible mark the boundaries between estates and fields—(*Ram Jewan v. Radha Persad*, 16 W. R., 109).

The acceptance by defendants in a former suit of a map as correct is legal, though not conclusive evidence against them in a boundary suit—(*Gordon Stuart v. Bejoy Gobind*, 8 W. R., 291). Chittas are evidence of title in boundary disputes, if an account is given of them, and they are properly introduced and verified—(*Sudakhina Chowdrain v. Raj Mohan*, 11 W. R., 350). A Government chitta is admissible as evidence in a boundary dispute—(*Mochiram v. Bissumbhur*, 24 W. R., 410).

3. (11) "Agricultural year" means, where the Bengali year prevails, the year commencing on the first day of Bysak; where the Fasli or Amli year prevails, the year commencing on the first day of Assin; and, where any other year prevails for agricultural purposes, that year.

As to how the year is to be calculated see *ante*, p. 25. Fusli or Amli year prevails in Behar, the Villyuti year in Orissa and Midnapore, the Bengali year in Bengal and the Maghye year in Chittagong. The Bengali year is solar and commences on the 1st Bysak corresponding to some day in the 2nd week of April; so the Villyuti year is solar, and is one day in advance of the Bengali year, commencing on some day in Bhadra or Assin, and the Fasli year is lunar, commencing on the 1st of Assin corresponding to some date in September.

3. (12) "Permanent Settlement" means the Permanent Settlement of Bengal, Behar and Orissa, made in the year 1793.

The date of the permanent settlement is 22nd March 1793—(*Baboo Dhunput Sing v. Baboo Guman Sing*, Sp. W. R., Act X, 61; 2 R. J. P. J., 267; 4 W. R., Act X, 41). The date of the permanent settlement for the district of Jessore was the 11th April 1790—(1 W. R., 230). In the former case, Jackson, J., remarked: "We think that the date of the permanent settlement must be held to be that on which the decennial settlement being declared to be perpetual, the permanent settlement came into force. The proclamation which declared the settlement to be permanent is contained in Regulation I of 1793, and that Regulation distinctly lays down the date from which it is to have force and effect, viz., the 22nd March 1793. In deciding this question, the Court cannot, as Mr. Doyno suggests, act upon the usual law of settlements and contracts, but must be guided by the distinct enactment of the Legislature which has declared the exact date when the permanent settlement came into force. The date of the permanent settlement mentioned in sections 3 and 4, Act X of 1859, was the date of the permanent settlement of Bengal, Behar and Orissa referred to in Regulation I of 1793, and not the date of settlement of a particular zemindari with its owner—

(*Musst. Poran Bibi v. Sedee Nazir Ali Khan*, Sp. W. R., Act X, 71). *Quere.*—When did the permanent settlement take place in Cuttack?—(*Sadanunda Mytee v. Nowrutton Mytee*, 16 W. R., 289). “The special appeal to this Court was commenced by urging that, as no permanent settlement had been carried in the district of Cuttack, the provisions of Act X of 1859 did not apply to Cuttack. The express words of section 15, Act X of 1859, include any person possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the raiyats, who, in the provinces of Bengal, Behar, Orissa, and Benares, holds a talook or tenure ‘otherwise than under a terminable lease’ at a fixed rent which has not been changed from the time of the permanent settlement. The word Orissa would include the district of Cuttack under ordinary circumstances, but it is said that the words ‘from the time of the permanent settlement’ must confine the operation of these provisions to those districts of Orissa where a permanent settlement has taken place. An illustration was mentioned with reference to this argument from the Sunderbuns, which have not been included in the permanent settlement of Bengal; and it was urged that a raiyat who held lands from the time of the permanent settlement in the Sunderbuns would not be entitled to the presumption of section 4, Act X of 1859. There, however, is very little doubt that as regards the whole of the province of Bengal, the law applicable to all suits for enhancement of rent is Act X of 1859, and that any raiyat, even in the Sunderbuns, might claim the benefit of the presumption of section 4 of that Act, or any under-tenure-holder might claim the benefit of the presumption of sections 15 and 16 of the Act. The law, Act X of 1859, is applicable to all the provinces mentioned in the law, and it is not necessary in suits coming under it to prove that the land to which the suit relates has been the subject of a permanent settlement. It is said that it is impossible to ascertain when the permanent settlement of Cuttack took place, as in fact there has been no such settlement. We do not think it necessary in this case finally to decide this question.” The province of Cuttack, including the port and district of Balasore, and all the territory west of the river Wardah and south of the Menulla and Gwailgur Hills, were ceded to the Company in perpetual sovereignty by the treaty of Deogum signed on the 17th December 1803, during the government of Marquis Wellesley. Cachar, except the hilly part, was annexed in 1830. The hilly part was annexed in 1853. The Cossia (Kasia) and Jyntia Hills territory was confiscated and annexed in 1835. Darjeeling was ceded by the Rajah of Sikim in 1835. Does the permanent settlement obtain in these provinces?

“We have made it clear that the permanent settlement intended is in all cases that of Bengal, Behar and Orissa made in 1793, and not as regards any district or area subsequently settled, the permanent settlement of such district or area.”—(R. C. R. 1).

3. (13) “Succession” includes both intestate and testamentary succession.

3. (14) “Signed” includes “marked” when the person making the mark is unable to write his name; it also includes “stamped” with the name of the person referred to.

This definition has been taken *verbatim* from the Civil Procedure Code (Act XIV of 1882). In the Registration Act (Act III of 1877) “signature and signed include and apply to the affixing a mark” but stamp would not be considered as a signature. In the definition under comment if a person knows to write his name, his affixing a mark will not be a signature.

In the Indian Succession Act, section 50, clause 1, "the testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction," and it has been held that the making of the mark is sufficient, although the testator can write at the time—*Baker v. Dening*, 8 A. and E. 94; *Wms. Exors.*, 67; and that the mark will be sufficient if made by the testator's hand, although a wrong name be written against it, or though that hand be guided by another person—(*re-Clark*, 27 L. J., Rob. 18; *Wilson v. Beddard*, 12 Sim. 28; *Wms. Exors.*, 67;) and that signature may be stamped—(*Jenkins v. Gaisford*, 3 S. W. and T. 93;) and that the testator's initial, or his signature under an assumed name, may stand for and pass as his mark—(*Wms. Exors.*, 68.) But sealing would not be regarded as signing—(*Wms. Exors.*, 68.) Sign or signature has a very technical meaning in the Indian Succession Act.

3. (15) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

'Prescribed' has therefore a technical meaning in this Act. See, however, section 184 *post*, where the word has been used in its ordinary sense. We must not forget that section 3 begins with the words "unless there is something repugnant in the subject or context."

Anything prescribed by the High Court will not be so called within the meaning of this Act.

3. (16) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

3. (17) "Revenue-officer" in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

3. (18) "Registered" means registered under any Act, for the time being in force for the registration of documents.

See clause (d) section 17 and clause (c) of section 18, and sections 49 and 50 of Act III of 1877, Appendix. The Bengal Tenancy Act, however, adds the following provisions for compulsory registration:

1. Voluntary transfer of a permanent tenure or share of it, or of a holding at a fixed rate must be registered (sections 12, 17 and 18, clause (d), of this Act).

2. So a contract enhancing the rent of an occupancy raiyat (section 29).

3. A contract enhancing the rent of a non-occupancy raiyat (section 43).

4. So a sublease by a raiyat for less than 9 years (sections 85 and 87).

See also sections 175 and 176 of this Act and sections 107 and 54 of the Transfer of Property Act.

Important omissions. The Act makes an important omission by not defining the word "lease."

The word occurs in several sections of the Act, but it is not defined, *e. g.*, sections 20 (1), 44 (c), 45, 47, 48, 49, 178, 179.

"Lease" in section 3 of Act III of 1877 (The Registration Act) "includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease." So in section 3, clause 12 of Act I of 1879 (The Indian Stamps Act) it

"means a lease of immoveable property and includes also (a) a potta, (b) a kabulyat or other undertaking in writing, not being a counterpart of lease to cultivate, occupy, or pass or deliver rent, for immoveable property, (c) any instrument by which titles of any description are let, and (d) any writing on an application for a lease intended to signify that the application is granted." In section 105 of Act IV of 1882 (The Transfer of Property Act) "a lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically, or on specified occasions to the transferor or by transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, shares, service, or other thing to be so rendered is called the rent." Mr. Field in his Digest defines a lease to "mean a contract creating or continuing the relation of landlord and tenant and executed by the landlord in favour of the tenant."

For 'stamps' to be affixed on leases, see the Appendix.

So the words 'land' (see *note*, p. 30 and section 20), 'private land' (see chapter XI), 'waste land' (see section 178), joint-landlords (see section 188), 'pasturage,' 'forest rights' (see section 193), 'uthundi' (see section 180), 'service tenure' (see section 187), 'homestead' (see section 182), 'mokurari lease' (see section 179), 'abwabs' (see section 74), 'transfer' (sections 11, 26, 72 and 73), have not been defined, and their meaning is to be gathered from the context or other Acts. See the sections referred to.

Definitions in the body of the Act. The word 'tenant' has been defined in section 4, 'tenure-holder' and 'raiyyat' in section 5, 'settled raiyyat' in section 20 and 'occupancy right' in sections 21 and 22, 'admitted to occupation' in section 47, 'Improvement' in section 76, 'Protected interest' in section 160, 'incumbrance' and 'registered and notified incumbrance' in section 161.

CHAPTER II.

CLASSES OF TENANTS.

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants, namely:—

- (1) tenure-holders, including under-tenure-holders;
 - (2) raiyyats, and
 - (3) under-raiyyats, that is to say, tenants holding whether immediately or mediately under raiyyats;
- and the following classes of raiyyats, namely:—
- (a) raiyyats holding at fixed rates, which expression means raiyyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,
 - (b) occupancy-raiyyats, that is to say, raiyyats having a right of occupancy in the land held by them, and
 - (c) non-occupancy-raiyyats, that is to say, raiyyats not having such a right of occupancy.

This section contemplates a logical division of all-classes of tenants under the Act. The classification will appear more clear from the following table :—

	(1.)	Tenure-holders and under-tenure-holders.
Tenants	(2.) Raiyats	<div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;">(a)</div> Raiyats at fixed rates. <div style="display: inline-block; vertical-align: middle;">(b)</div> Occupancy raiyats. <div style="display: inline-block; vertical-align: middle;">(c)</div> Non-occupancy raiyats. </div> </div>
	(3.)	Under-raiyats.

“Tenant” is a general term for tenure-holders, raiyats, as well as under-raiyats, while the word “raiya” includes three classes of raiyats described as (a), (b) and (c). It follows that an under-raiyat is a tenant but not a raiyat, while a non-occupancy raiyat is both a raiyat and a tenant. The word “tenant” has been defined in clause (3) of section 3, and “tenure-holder” and “raiya” in section 5. In Act X of 1859 and Act VIII of 1869 B.C., the tenants were not classified so distinctly, but from the context it could be gathered that those Acts also contemplated three classes of raiyats, viz., raiyats at fixed rates (section 3, Act VIII of 1869 B.C. and Act X of 1859), occupancy raiyats (section 6, Act VIII of 1869 B.C. and Act X of 1859), and non-occupancy raiyats (section 8). Under-raiyats were not mentioned, except cursorily in section 6, and tenure-holders not provided, except in section 26 of Act VIII of 1869 B.C., and section 27 of Act X of 1859. In Act XVIII of 1873, which is the existing “North-Western Provinces Rent Act,” five classes of tenants are contemplated, viz, middlemen (section 4), tenants at fixed rates (section 5), ex-proprietory tenants (section 7), occupancy tenants (section 8), and tenants-at-will (section 21). Of these ex-proprietory tenants are only a special class of occupancy tenants.

The classification made in this section is, however, not exhaustive. There may be a separate class of raiyats within the general body of occupancy raiyats—(vide clause c of section 31; compare also 6 Weekly Reporter, Act X, 33, Ram Coomar v. Bhyrub Chandra; and 9 W. R., 83, Sadhoo Singh v. Ramanoora, Lall; 9 W. R. 349, Parmananda v. Paddo Mani; 12 W. R., 102, Gauri Nath v. Ramgati).

5. (1) “Tenure-holder” means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

5. (2) “Raiyat” means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

This distinction is the result of much discussion and opposition. The *Rent Commission*, in their report of the 29th June, 1880, wrote :

The distinction between tenure-holder and raiyat.

“Turning to the case-law we find it decided: (1) that if a person takes land and at once sub-lets it, he will be a middleman, and will not under the present law acquire a right of occupancy in such land; (2) that if a raiyat, who has acquired a right of occupancy in land, sub-lets such land, he does not by so doing forfeit his right of occupancy; but (3) he cannot by so doing alter the nature of his holding and convert it into an under-tenure. Applying these principles, it will appear that the reclaiming lease-holder, who never himself cultivated and who sub-let before he had held for twelve years, never was a raiyat with a right of occupancy. He was and is a middleman; but what are the rights of a middleman is not laid down in the law, and must be very uncertain. If such lease-holder reclaimed and cultivated part of his lot and let the rest of it, are his position and his rights different in respect of the two portions? Can he be a raiyat with a right of occupancy as to the former portion—unable to put off this character and convert himself into anything else but a raiyat—and as to the latter portion, a middleman with undefined rights and liabilities? This uncertain and inconsistent state of the law—built up of isolated cases dealing with individual rights, which were the complement of the rights of other persons not before the Court and not therefore duly considered—has led to much profitless litigation, and if allowed to continue must lead to still less satisfactory results. We think it, therefore, very expedient that the rights of the above classes of persons should be defined, and that some rules should be laid down which will enable the Courts to say in all cases who are tenure-holders or under-tenure-holders, and who are raiyats having a right of occupancy. After the fullest consideration of the whole subject, it appears to us impossible to discover any principle of distinction between raiyats and tenure-holders or under-tenure-holders which will hold good universally or even in the large majority of cases. If cultivation be taken as the test, whether the interest of a particular tenant is a tenure (or under-tenure) or a raiyati holding, a talukdar, tenure-holder or under-tenure-holder may cultivate land forming part of his taluk, tenure or under-tenure, while the person commonly called a raiyat may have sub-let his entire holding and may not himself cultivate a single square foot. It is impossible, therefore, to say that under all circumstances the person who cultivates is a raiyat, and the person who does not cultivate is a tenure-holder. If the receipt of rents from persons in the actual occupation of the land be considered the essence of a tenure-holder or under-tenure-holder, then we find raiyats also sub-letting and receiving rents from their tenants in actual occupation. If hereditability be tried, the raiyat's interest, the raiyat's holding is heritable as well as the taluk. Is transferability the test? The raiyat's jama, independently of Acts X of 1859 and VIII of 1869, is commonly transferable by custom. Is saleability for its own arrears set up as the true distinction? The landlord of his own option brings raiyats' holdings to sale in execution of decrees for rent, while a tenure or under-tenure is not subject to the special law for the sale of under-tenures for the recovery of arrears of rent due in respect thereof, unless it is so saleable by the title-deeds or established usage of the country. If the quantity of rent paid by the tenant be supposed to be the point of distinction, then in Rungpore the rent of a jote varies from one rupee to half a lakh of rupees, while in other districts the rent of many taluks is but a few rupees. It is true that a tenure-holder or under-tenure-holder is not liable to enhancement upon the grounds applicable to a raiyat having a right of occupancy; but this distinction stops here, for the existing law does not define the grounds upon which the rent of a tenure or under-tenure can be enhanced.

“Under those circumstances we have come to the conclusion that the quantity

of land included in a single demise will afford the most reasonable ground of distinction in the case of the class of tenants under discussion. Although at the present time, and under the altered condition of agricultural society, actual cultivation is no longer the essence of a raiyati tenure, we think that the original conception of a "raiayat" was that he entered on the land for the purpose of cultivating it or bringing it under cultivation, either by his own personal labour, or by that of his servants or followers, or by means of persons who would occupy portions of the land, giving him in return a share of the produce according to the custom of the country, and afterwards a money rent when it suited both parties to make this arrangement. A raiyati holding being created in this manner, it did not cease to be such because the raiyat subsequently sub-let (there being nothing either in his contract or in the custom of the country to prevent him from doing so), and practically converted himself into a middleman, which is only another name for a tenure-holder or under-tenure-holder. This process of conversion is going on, and has long been going on, in every district of Bengal. That, while undergoing this process, there should be some doubt as to how far the tenant was to be governed by the incidents of the raiyati condition which he is leaving, or by those of the tenure condition to which he is approaching, is only natural. It is not possible so to adapt legislation as to make exact provision for this transition state; but looking at what we take to be the true conception of a raiyat, and finding it impossible to ignore the custom of sub-letting, we think it reasonable to say that, whether a tenant subsequently sub-lets the whole or part of the land demised to him, it is not easy to presume that he had any intention of assuming the position and status of a raiyat, if the quantity of land included in the original demise was so large that it could not be cultivated by a single tenant with such means and assistance as are usual in the country.

"We have therefore enacted (section 11) that, notwithstanding any custom or contract to the contrary, every person to whom more than one hundred standard bighas of land have been let by a single demise, otherwise than for a term or year by year, shall be deemed to be a tenure-holder or under-tenure-holder within the meaning of sections 8, 9 and 10. If the lessor were a proprietor, the lessee will be a tenure-holder; if the lessor were a tenure-holder or under-tenure-holder, the lessee will be an under-tenure-holder of the first, second degree, and so on. We have made possession necessary to complete the demise in order to avoid the risk of litigation, which, in this country, is so common when persons, out of possession but relying on titles that have to be established in Courts of law before they can be enforced, grant leases to persons who are prepared to speculate in law-suits. We have made these provisions applicable to tenancies created as well before as after the commencement of the Act. We have further declared that every such tenure or under-tenure, which has been held for twelve years, shall be permanent and transferable. The quantity of land selected for the purposes of these provisions is, of course, an arbitrary quantity; but we think it reasonable to draw the line at one hundred bighas, having regard to what has been said above. It may be well to observe that, although the person who holds more than one hundred bighas is made a tenure-holder (or under-tenure-holder), whether he or his landlord wishes it or not, the person who holds one hundred bighas or less may be a tenure-holder or a raiyat, as he and his landlord wish and agree." (R. C. R. I.) It is needless to give the definition of the Rent Commission Bill here, because it was found defective and abandoned.

The Select Committee, in Bill No. I, gave up the attempt of drawing any such distinction, and reported on the 2nd March 1883 that the "term 'tenure-holder' as used in the Bill is defined [section 3, (3) and (4)] to include what are commonly known as under-tenure-

holders, that is to say, *darpatnidars*, *se-patnidars*, *dar-ijaradars* and such like; and also tenants of the class hitherto known as *rai-yats* at fixed rates. The inclusion of tenants of this latter class in the definition is convenient from the draftsman's point of view, but is, it is believed, otherwise of little importance, inasmuch as the incidents which are attached to their holdings place them to all practical intents and purposes on the same footing as tenure-holders. The term '*rai-yat*' has, following the Bill prepared by the Rent Law Commission, been limited to tenants holding land for purposes of agriculture, horticulture or pasture, or who have come into possession for such purposes, except where *bastu* or homestead land is included in a *rai-yat's* agricultural holding, in which case it will be treated in the same way as the rest of the holding, and he will be deemed to hold it as a *rai-yat*. Except as just stated, no attempt has been made to define the terms '*tenure-holder*' and '*rai-yat*,' or to settle the distinction between these two classes of tenures. The importance of this distinction for the purposes of the Bill has not been overlooked, nor has the possibility that cases may occur near the line of separation between the two classes, in which a doubt will arise as to whether the tenant is a *tenure-holder* or a *rai-yat*; but it is believed that the distinction is generally understood, and that, save in exceptional cases, no difficulty will arise. However this may be, no complete definition has as yet been suggested which would not be certain to give rise to difficulties greater than those which it is intended to remove." (S. C. R. on B. 1).

The Bengal Government (Sir Rivers Thompson) however proposed a definition (*Letter to the Secretary of the Government of India*, dated the 27th September 1883) with the following remarks:

"The negative character of the definitions of '*tenure*' and '*rai-yat*' has been unfavorably criticised. The difficulties in the way of definition proposed by the Bengal Govt. a positive definition, specially those to which the Rent Commission draw attention in paragraph 20 of their report, are not ignored; but it is clear that the want of some definition, which might afford a presumption as to the nature of the right, leads in practice to serious embarrassment from which all landlords suffer. The Board of Revenue even go the length of asserting that any '*rule of thumb*' procedure which would enable a *tenure* to be distinguished even presumptively from an occupancy holding would be a great relief to landlords, and a help to the revenue administration of the province

"On such a question as a legal definition of this sort, the Lieutenant-Governor has much diffidence in offering any opinion; but it seems to him that there is reason for the dissatisfaction expressed with this portion of the Bill, and that a definition is more likely to avoid difficulties than the absence of any definition at all. One of the greatest difficulties to be met with in dealing with the rent question in Bengal is the question of sub-letting. It is possible that by accurately defining the class who, as occupancy *rai-yats*, will be entitled to sub-let, that difficulty may be lessened; and, therefore, the Lieutenant-Governor would suggest that, while those who retain a substantial cultivating interest in the holding should be regarded as occupancy *rai-yats*, all those owners of occupancy rights who never got possession for the *bonâ fide* purposes of cultivation, or who, having originally been cultivators, have divorced themselves from direct connection with, or responsibility for, the cultivation of the holding, should be classed as *tenure-holders*. It is to be remembered that the late Supreme and present High Court have declared '*any tenure by title deeds or by the custom of the country, transferable by sale*' to be an under-tenure (Indian Law Reports, Vol. 8, page 675), while the Lieutenant-Governor understands that the Courts look on persons, who have not got possession for *bonâ fide* purposes of cultivation in the light of

tenure-holders (9, Calcutta Law Reports, page 449). It seems therefore to Mr. Rivers Thompson that a definition on the lines he proposes would not only be in accordance with the prevailing judicial opinions on the subject, but would also establish an intelligible demarcation line between the cultivator and the mere rent-receiver, which would hold good in the great majority of, if not in all, cases. Such a definition would also have the great advantage of classing as tenure-holders mahajans and other non-agricultural purchasers of occupancy rights, whose raiyats would then become 'ordinary' raiyats, saved by the provision of the Bill applicable to their class from the worst evils of rack-renting, and capable of acquiring occupancy rights in course of time.

"In making this suggestion, the Lieutenant-Governor is not unmindful of the objection that it would tend to increase indefinitely the chain of middlemen between the proprietor and the actual cultivator. The increase, however, would be but nominal; for the non-cultivating occupancy raiyat is already in fact a middleman, while middlemen divorced from all connection with tillage, are rarely in these Provinces, owing to the pressure of population on the soil, recruited from the cultivating classes. Besides, even if middlemen are created, the condition of the actual cultivator under them would be better (if the proposals which the Lieutenant-Governor will subsequently make, be accepted), than under rack-renting occupancy raiyats, who are middlemen in all but the name. Mr. Rivers Thompson is also not forgetful of the probability that such a definition as he proposes would meet with some opposition in portions of deltaic Bengal; for instance, where certain classes claim the status and immunities of tenure-holders, while exercising over under-tenants the power and privileges at present enjoyed by occupancy raiyats. These classes would oppose a formal definition which would curtail the power they claim to exercise; and it is only right to say that their opposition seemed so formidable to Sir Richard Temple that, notwithstanding the existence of judicial decisions declaring these classes to be tenure-holders, he deemed it imprudent to provoke it by affording any protection, even in settlement proceedings, to the actual cultivators of the soil. On the other hand, the proposed definition would meet with approval, and would redress existing inconveniences in those districts where cultivation expands or contracts with the rise or fall of prices, an elastic rent system being the consequence.

"Such being the objects to be provided for, the question is, what form should the definition take? This question is, no doubt, difficult, the difficulty being in connection with the point whether an occupancy raiyat may sub-let his holding and still remain a raiyat. In by far the greater portion of these Provinces it is, in the Lieutenant-Governor's opinion, safe to provide that a raiyat who sub-lets a large portion of, if not his entire holding, thus divorcing himself from actual cultivation, shall be deemed to be, not a raiyat, but a tenure-holder. In the less settled portions of the deltaic and frontier districts, however, sub-letting is the usual procedure for re-claiming land, and is rather a method of raiyati cultivation than an evidence of sub-infeudation. In such districts, therefore, sub-letting of the entire holding should not operate to convert the lessor into a tenure-holder, but should be deemed consistent with the status of a raiyat. Bearing these considerations in view, the Lieutenant-Governor submits for the consideration of the Council the following definitions which are based on those contained in the Rent Commission's Report:—

(a.) A tenure means (1) a rent-paying interest in land subordinate to the interest of a proprietor and superior to that of a raiyat; (2) a rent-free interest in land when a rent-paying interest in the same land exists between the proprietary interest and such rent-free interest; (3) a revenue-free or rent-free interest in land when no rent-paying interest exists between such revenue-free and rent-free interest and the proprietary interest. A tenure includes an under-tenure.

Illustrations.—A *patni*, *dar-patni*, or *se-patni* interest is a tenure. An *ijara* or *dar-ijara* is a tenure. An occupancy holding, which the owner does not cultivate as a *raiyyat*, is a tenure. A valid *bramhottur* is a tenure. A *lakhoraj* holding, included in a *revenue-paying* estate, and not entered in the register of *revenue-free* lands, is a tenure.

(b.) A *raiyyat* or tenant means a person who cultivates land, or who occupies land for the purposes of cultivating it, or bringing it under cultivation. A person cultivates land or brings it under cultivation within the meaning of this definition, when cultivation is carried on by himself, or by the members of his family, or by his servants, or by hired labour, or by sub-letting a part while continuing to carry on cultivation by one or more of the preceding means in a moiety of the land.

Provided that by order duly published in the *Calcutta Gazette*, the Local Government may, declare that cultivation as a *raiyyat* may be carried on within a tract to be specified in such notification by sub-letting the whole of the land, and may suspend or withdraw that order, and such declaration shall have the force of law.

Illustration.—Cultivation of the whole or part of an occupancy holding on the terms of a division of produce between the occupancy-holder and the actual cultivator, is cultivation under a sub-lease.

(The latter illustration is meant to provide for those cases which, judging from experience, would probably be numerous, in which mahajans having bought up occupancy rights would let a portion of the land on a *nugli*, and the remainder really on a *bhauk* tenure, but ostensibly on a contract fixing portion of the produce as the wages of labour.)

I am to propose below that landlords be allowed a more summary procedure for collecting rents from tenure-holders than from *raiyyats*, while non-occupancy *raiyyats* renting land from tenure-holders be granted a more beneficial *status* than *kurfas* or under-tenants can enjoy. It is to be hoped that by these means the interests of the landlords on the one hand, and those of the actual cultivators on the other, will jointly operate in the direction of classifying as tenure-holders all owners of occupancy rights who do not actually cultivate the soil; and further that the limitations imposed on the powers of tenure-holders to rack-rent, to which reference will be made later on, will discourage the growth of the class."

Referring then to the best means of preventing rack-renting, the Bengal Government observed: "In the Lieutenant-Governor's opinion an effective way to prevent these evils is by converting all purchasers of occupancy rights, who are not *bond fide* cultivators, into tenure-holders; under whom the actual cultivator will have the protection afforded by the status of a *raiyyat*; and this was one of the reasons which induced Mr. Rivers Thompson to propose the definitions of *tenure* and *raiyyat* given in paragraph 6 above."

Definition proposed by
Bill No. II.

Bill No. II then proposed the following distinction:

"Section 5. (1) 'Tenure-holder' means primarily a person who has acquired from a proprietor or from another tenure-holder the right to collect rents, and includes also the successors in interest of persons who have acquired such a right and the persons who are to be deemed tenure-holders under section 37.

(2) 'Raiyyat' means primarily a person who has acquired land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and, subject to section 37, includes also the successors in interest of persons who have so acquired land.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

- (a) local custom;
- (b) the provisions of section 37, with respect to raiyats who sub-let more than half their holdings; and
- (c) the nature of the right of tenancy as originally acquired, that is to say, whether it was a right to collect rents or a right to cultivate land.

(5) Where the area of a holding exceeds one hundred standard bighas, and the whole or part of it is sub-let, the tenant shall be presumed to be a tenure-holder until the contrary is shown."

"Section 37. If the portion of his holding sub-let by an occupancy raiyat exceeds more than half his holding, he shall, on being registered in a public register as a tenure-holder under any Act which may be passed for the registration of tenure-holders, be deemed to have become a tenure-holder within the meaning of this Act.

Conversion of sub-letting occupancy-raiyats into tenure-holders

Provided as follows :—

(a) Nothing in this section shall apply to any person who is disabled from cultivation by age, sex, disease, accident or temporary absence from home on military or domestic service or a pilgrimage, and who sub-lets his holding or any part thereof for a term not exceeding the duration of his disability.

(b) If a person is converted into a tenure-holder by virtue of this section his rent shall be liable to enhancement on the same terms and subject to the same conditions as if he were an occupancy raiyat.

Explanation.—A person who has been converted into a tenure-holder by virtue of this section does not by reason of the portion of his holding sub-let ceasing to be more than one-half the holding become again converted into a raiyat."

And the Select Committee reported :—"In the section which relates to the distinction between tenure-holders and raiyats, we have endeavoured to describe, rather than to define, each class. Whilst recognizing the expediency of laying down rules for the guidance of Courts in dealing with cases which lie near the border line between the two classes, we retain the opinion that any attempt to frame a rigid definition of either class would tend to create, rather than to remove, difficulties."

The Select Committee on Bill No. III reported :—"The only amendments calling for notice in this chapter are: 1st, that we have omitted all reference to the raiyat converted into a tenure-holder under section 37 of the Bill No. II as it has been determined to omit section 37; and 2nd, that we have altered section 5 (5) so as to provide that a tenant holding more than one hundred bighas shall be presumed, until the contrary is shown, to be a tenure-holder, without raising an issue as to his having sub-let any part of his holding."

The Hon'ble the Chief Justice (Sir Richard Garth) made the following observations on this definition: "A tenure-holder is described as a person who has acquired from a proprietor, or from another tenure-holder, the right to collect rents. Now it seems to me that it would be just as correct to describe a tradesman who has bought a shop as a person who has acquired a right to collect debts,

Sir Richard Garth on the definition.

as it is to describe a tenure-holder as one who has acquired a *right to collect rents*. It may be generally true of tenure-holders that they have a right to collect rents; because most of them have tenants (introduced either by themselves or others) by whom rents are payable. But it is by no means the essence of a tenure-holder's interest that he should have a right to collect rents; and still less that he should have acquired that right from his immediate landlord. His right to collect rents is merely one of the incidents of his position, when his land is let to tenants; as it is one of the incidents of a tradesman's position that he has a right to collect debts when he has customers from whom they are due. A more correct description of a tenure-holder would be 'one who holds a tenure, mediately or immediately under a proprietor, and who is not himself a raiyat.' But this of course leaves the important question open—what is a raiyat? and what is the true distinction between a raiyat and a tenure-holder? The description which I have suggested is correct as far as it goes, and it is at any rate not calculated to mislead; whereas the description proposed in this section would be wholly inappropriate to a large class of tenure-holders. Suppose, for instance, that a settlement were made with a zemindar at the present day of a tract of waste in the Sunderbuns. I have now before me a grant of this kind which was made very lately. Such a proprietor would be at liberty to grant any leases he may think proper of any portions of that tract. He may grant mokmrari leases, either permanent or for life; he may grant patni leases, or jungleboori tenures; and in each of these cases the object for which he makes the grant, and the object of the lessee in taking it, would probably be the cultivation of the soil.* But each of these grantees would be at liberty (subject, of course, to any special conditions which his lease may contain) to cultivate or not, as may suit his convenience; and each would be at liberty to grant his land for sub-tenure, or to let it out to raiyats, or to cultivate it himself with his own coolies. But, whether he does one thing or other, I take it he would be equally a tenure-holder; and that any raiyat, to whom he lets the soil for the purposes of cultivation, would be capable of acquiring occupancy rights. And yet to describe any one of these grantees 'as a person who has acquired from the proprietor a right to collect rents,' would be a manifest misdescription. The truth is that each successive tenure-holder is to all intents and purposes as much an owner of the soil, to the extent of the interest which he acquires in it, as a tenant of land in England. He is of course bound, as every tenant is, by the conditions which are imposed upon him, either by the general law or by custom having the force of law, or by the contract which he makes with his superior landlord on the one hand, or his sub-tenants on the other; but, subject to those conditions, he may deal with the land as he pleases. If, when he acquires his tenure, the land is occupied by raiyats, he can of course only deal with those raiyats as the law or the contract under which they hold allows him; but if the land is waste, or partly waste, when he acquires it, he may either leave it so, or utilize it in any way he thinks proper. It seems to me, therefore, that the description of a tenure-holder in this section is utterly misleading. It may no doubt be a difficulty to define the line which is to separate the two great classes of tenure-holders and raiyats, but I think it is a duty which the Legislature should take upon themselves, even though they may perform it imperfectly, rather than to place several hundred judicial officers in a difficulty which they may each attempt to solve in a different way."

Mr. Justice Field in his minute remarks: "I do not see the force of the word 'primarily,' as the Bill does not proceed to provide for the secondary meaning of the term tenure-holder. The definition, as it stands, appears to be defective. It excludes jungleboori-lalukdars, who have always been understood to be tenure-

Mr. Justice Field on the definition.

holders. These talukdars did not acquire merely the right to collect rents. They acquired an interest in the land itself, which they agreed to take with full power to reclaim and cultivate—part of it themselves—and part by letting it to tenants after reclamation, or before reclamation to persons who would reclaim and cultivate, or sub-let for reclamation and cultivation. Then the ‘tenure-holder’ of the definition in the Bill is not a tenant, for he does not hold land and he does not pay rent, for he pays and delivers nothing for the *use and occupancy* of land. Again, the definition would include a mere agent or mortgagee in possession, who are not generally understood to be tenure-holders. The definition appears to have been framed with a view to avoid the admission that a tenure-holder obtains an interest in the soil itself. When land is acquired under the Land Acquisition Act, the tenure-holder is allowed compensation for an interest in the soil, and there are numerous other facts well known to persons acquainted with the common law of these provinces, which leave no doubt that the tenure-holder acquires, not merely the right to collect rents, but a substantial interest in the land itself. If a tenure-holder acquires no interest in the land, how can he give the use or occupation thereof to a tenant under him? Then, regard being had to sub-section (3) of section 5, the definition of ‘raiyyat’ must fail with reference to this sub-section; it has already been pointed out that persons holding land in certain Government estates will not be raiyyats, and will not therefore be entitled to the benefit of raiyyats under the Bill, and it may further be pointed out that the same disability will attach to raiyyats under lakherajdars not registered under Act VII B.C. of 1876, *shebuis*, *matuolis* and other classes of landlords. What also becomes of persons holding under the mokurajdars and istemurajdars of Regulation of 1793, persons of whom it is impossible to predicate that they acquired the right to collect rents?”

As the definition stands, it includes all sorts of tenures either rent-paying or rent-free, as well as service tenures; only it must be created by the proprietor or acquired from him. Is Government a proprietor? No, except as owner of *khás mehal*. So that a tenure may be created by Government in a *khás mehal* but not otherwise. But are revenue-free or rent-free lands tenures? Rent has been defined in clause 5 of section 3, but the word ‘revenue’ has not been defined in this Act. We must, therefore, adopt the definition of section 1 of Act VII of 1868 B.C., which provides that “the word *revenue* includes every sum annually payable to Government by the proprietor of any estate or tenure in respect thereof, and every sum payable to Government in respect of tuccevie or of any money advanced by Government to proprietors of land for making or repairing embankments, reservoirs, or water-courses, or other improvements on the land held by them.” Read with this definition all revenue-free lands whether entered in the Collector’s General Register or not are estates under the Act, but not tenures (see the definition of the word ‘estate’ in this Act). Except in *khás mehal* there cannot, therefore, be a rent-free tenure under the Government. If there be any revenue-free land under the Government it becomes an estate. But rent-free tenures are possible in an ordinary estate under proprietors other than Government. The word ‘tenure’ has been defined in Act VII of 1868 B.C. to “include all interests in land whether rent-paying or lakheraj (other than estates as above defined), and all fisheries, which, by the terms of the grants creating the same, or by the custom of the country, are transferable, whether such tenures are reasonable or not, and whether the right of selling or bringing them to sale for an arrear of rent may or may not have been specially reserved by stipulation in any instrument.” In this definition it will be observed that transferability is the essence of what is made to constitute a tenure, and that it is immaterial whether the land be revenue-paying or lakheraj. It is obvious that this definition does

not suit the present Act. - Compare the definition of 'tenure' in the Road Cess Act (David v. Grish Chunder Guha, I. L. R., 9 Cal., 183 at p. 185.)

Who has acquired a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it.—This read with clause (b) of sub-section (4) means, that we are to see the original purpose of the acquirement or creation of the tenancy. If a person acquire a land for the purpose of bringing it under cultivation by establishing tenants on it, he is a tenure-holder. But if a person acquires it for the purpose of cultivating it by himself, and then abandons his purpose, and establishes tenants upon it, he is a cultivator. This seems to be consistent with section 85, under which a raiyat can, under certain circumstances, sub-let. But again under section 20, in order to be a settled raiyat with a right of occupancy, the cultivator must continue to hold his land as a raiyat, i. e., for the purpose of cultivating it by himself, or by hired servants or by partners. Then as Mr. Justice Field observes the present definition would exclude the *jungleboori* talukdars, the *howladars*, and others who originally held for the purpose of cultivation from the rank of tenure-holders. This, however, is in consonance with the case law on the point. In the case of (Karoolal Thakur v. Luchmeeput Doogar, 7 W. R., 15,) the learned Judges observed: "On the first point the judgment of the Principal Sadar Amin is clear,

Distinction between
tenure-holders and rai-
yats very difficult to
determine.

and in our opinion substantially sound. It is as follows: 'I hold without any doubt that the tenure of the vendor was that of a cultivator or raiyat, and therefore as such did not require registration when plaintiff purchased it, the provisions of section 27 of Act X being expressly applicable only to persons holding a permanent transferable interest between the zemindar and the cultivator. The nature of the disputed tenure as raiyati is proved by the pottah of the defendant's vendor's ancestors granted by the zemindars in 1205. * * * It appears from its contents to have been granted to tenants who had been old cultivators in definition of a *durbundee* rate on all lands held by them in the *pergunnah*; it describes them and assigns to them the pottah as *abadkars*, *malgu-zoors* and *mokurari jotedars*, all of which words characterise the tenancy as that of cultivators: it continues to them the cultivation as such, and then winds up by adding that *you will sow or cause to be sown the lands so held by you, and pay the rents, &c.*, which again is definite in that the tenure was raiyati and was continued such. It is argued that the words *cause to be sown* are indicative of the tenure having been made *intermediate* when the above pottah was given whatever it may have been before it, as the tenants were permitted to have cultivators under them. But this is an incorrect interpretation of the words quoted which are quite consistent with the wording of a raiyati pottah. The tenants were by the pottah continued as raiyats, and a right created as such by the zemindar need not be a *khudkasht* or self-cultivating tenant to maintain his rights as such. If he sub-let his tenancy, the nature of it will not be altered thereby: as in respect of the zemindar, he will still continue its tenant, and will be responsible to the zemindar for the rent as such.' We agree with the Principal Sadar Amin in thinking, for the reasons given by him in his judgment, that this tenure is merely a raiyati tenure and therefore not one the transfer of which required registration in the sherista of the zemindar. Everything points to this conclusion, except the fact of the so-called *putnee* which the original tenants granted. No doubt their treating this lease as a *putnee* goes to show that they themselves deemed their position to be something more than that of mere raiyats. Still we do not think that the course thus adopted can alter the nature of the tenure if it in its

inception was, as we have no doubt it was, merely raiyati. It is frequently difficult to say what tenures are raiyati and what are those of middlemen. In the case of *Ram Mungal Ghose v. Lukhie Narain Shaha*, 1 W. R., 70, a Division Court held that the mere fact that one who holds land sub-lets it, does not make him a middleman, and that the real question to be tried was 'whether the defendant was or was not a raiyat, or one who held land under cultivation by himself or others who took for him under his supervision as a superior cultivator, or whether he was a middleman because he really did not cultivate in the sense of section 6 (Act X), but was a general lease-holder or a speculator in land rent.' Applying this rule, it appears to us that those under whom the plaintiffs claim were not middlemen, but that they held the lands in question under cultivation by themselves, or by others taking under them. In our opinion, therefore, it is unnecessary to register in the zemindar's sherista transfers of this tenure." So in *Durga Prasanno Ghose v. Kalidas Dutt*, 9 C. L. R., 449, Mr. Justice Field observed: "There is almost no evidence on the part of the defendants to show what was the nature of their interest in its inception. The only real evidence which there is, is on the part of the plaintiff, and goes to show that at the time when the interest of the defendants was created, there were already raiyats upon the land, and that the interest created in the defendants was a right not to the actual physical possession of the land itself, but to collect the rents from the raiyats who were already in possession. We have already expressed our opinion in another case that the only test of a raiyati interest which can be applied in the present state of the law is to see in what condition the land was when the tenancy was created. If raiyats were already in possession of the land, and the interest created was a right not to the actual physical possession of the land, but to collect the rents from those raiyats, that we think is not a raiyati interest. If, on the other hand, the land was jungle or uncultivated or unoccupied, and the tenant was let into the physical possession of the land, that would be a raiyati interest; and the nature of this interest so created would not, according to a number of decisions of this Court, be altered by the subsequent fact of the tenant sub-letting to under-tenants. Applying this test to the present case, we are unable to agree with the Subordinate Judge that the interest here created was in its inception a raiyati interest."

• Similarly in *Baboo Dhunput Sing v. Baboo Goman Sing* Sp. W. R., (Act X) 61, the Court (W. S. Seton-Karr and E. Jackson, J.J.) observed: "It is very difficult to lay down

any general definition of the word 'raiya.' As a general rule they are the cultivating tenants, but they may not be cultivators at all themselves; they may cultivate their land by hired labour or by under-tenants. In this case the amount of land included in the tenure is, we think, sufficient evidence that the tenants are not raiyats, and that view is supported by the light thrown on the fact by the original potta, which addresses the original lessee as *mustagir*, and directs him to take measures to have the land cultivated by hillmen as raiyats, the land lying on the borders of the hill ranges in the north of the Purneah district." As we have already observed the definition seems to say that if a land

Is sub-letting a test for distinguishing a tenure-holder from a raiyat?

is acquired originally for the purpose of sub-letting, the person acquiring would be a tenure-holder; but if it is acquired originally for the purpose of cultivation and subsequently sub-let, he would be a raiyat. In *Gopee Mohan Roy v. Shih Chunder Sein*, 1 W. R., 68, the

Court observed: "It is difficult to draw a distinction between a raiyat with a right of occupancy and a middleman; for occupancy does not necessarily imply cultivation, and middlemen do not come within this section (section 6 of Act X of

1859)." In *Rama Mungul Ghose v. Lukheenarain Shaha*, 1 W. R., 71, it was held that the mere fact of a raiyat sub-letting would not of itself make him a middleman.—"The real question which the Judge should have tried is, whether the defendant was or was not a raiyat, or one who held land under cultivation by himself or others who took for him under his supervision as a superior cultivator, or whether he was a middleman, because he really did not cultivate in the sense of section 6, but was a general lease-holder or speculator in land rent." In the former case, however, we would not call the transaction as a sub-lease. "A person who takes an ijara or farming lease of a whole village is a middleman and not a raiyat"—(*Murish Chunder v. Alexander*, Marsh, 479.) In one respect, an occupancy raiyat differs little from a middleman; he can sub-let the whole of his land without in any way forfeiting his own rights, or conferring any rights of occupancy on the sub-lessee—(*Kali Kishore v. Ram Churn*, 9 W. R., 344.) So in *Kali Churn v. Ameeruddin*, Bayley, J., says: "I further think that the benefits of section 6 are not restricted to those who with their own hands till the soil, but extend to those who are *bonâ fide* actual cultivators in the sense that they derive the profits from the produce directly, and are not middlemen who have no connection with the produce, except by receiving the rents in cash or kind from those who directly derive their profits from the produce."—(*Butabee Begum v. Khooral*, 2 All., 24.) We have seen that in *Karoo Lal v. Luchmeput*, 7 W. R., 15, it was held that whenever a difficulty of this kind appears, the origin of the holding should be looked to. In *Uma Churn Dutt v. Umatare Debee*, 8 W. R., 181, Seton-Karr, J., observed: "We think that the finding of the lower Courts as to the character of the tenure does not in law remove the defendant from the category of raiyats whose rents may be enhanced under section 6, Act X of 1859. The defendant took *âpotta* to clear and cultivate a *Sunderbund Churk*, at a progressive rate of rent; and if he cleared some of the land *âpot* by his own labor, but by settling raiyats under him on the said *Churk*, this does not alter the original character of his holding." (See also *Murish Chunder v. Ram Chunder* 18 W. R., 528; *Khujoorunnesa Begum v. Ahmed Reza*, 11 W. R., 88; 9 B. L. R., 13.)

"As to the definition of 'raiya' in sub-section (2) the observations already made (with reference to the definition of the tenure-holder) apply to the use of the word. 'primarily.' Then what is the exact force of the term 'acquired' ? No doubt it was intended to mean that the raiyat gets something more than the use and occupation mentioned in the definition of rent in sub-section (3) of section 5. But what this additional something is, and in what respect it differs from proprietorship or ownership, the Bill does not explain, and I find it impossible to conceive."—*Mr. Justice Field's Minute.*

CHAPTER III.

TENURE-HOLDERS.

Enhancement of Rent.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

- (a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or
- (b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

The rent of shikmi taluks or tenures existing at the time of the Permanent Settlement cannot be enhanced unless upon proof (1) of a special right by custom to enhance; or (2) of a right depending upon the conditions of the grant; or (3) that the talukdar by receiving abatements has subjected himself to increase, and the lands are capable of affording it. These rules were laid down in section 51 of Regulation VIII of 1793, which has been repealed by this Act, and have been embodied in the present section in clauses (a) and (b). Section 51 of Regulation VIII of 1793 ran as follows: "No zemindar or other actual proprietor of land shall demand an increase from the talukdars dependent on him, although he should himself be subject to the payment of an increase of *jumma* to Government, except upon proof that he is entitled so to do, either by the special custom of the district, or by the conditions under which the talukdar holds his tenure, or that the talukdar, by receiving abatements from his *jumma*, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it." The present section has substituted "local custom" for the "special custom of the district," "reduction of his rent," for "abatements from his *jumma*," and following the decisions of the Courts adds a special clause—"otherwise than on account of a diminution of the area of the tenure." Where a zemindar sues for enhancement under section 51, the grounds contained in it must be those contemplated in Regulation VIII of 1793, section 51—(Kristo Chunder v. Elahoo Buksh, 20 W. R., 459; compare 12 B. L. R. 232; 15 B. L. R., 120; 13 Moore's L. A., 248; 19 W. R., 144; S. D. A. Rep. 1859, 677; S. D. A. Rep. 1857 1413.)

The old section.

The new section.

The provision contained in this section is subject to the restrictions imposed by section 49 of Regulation VIII of 1793, and section 50 of this Act. Section 49 of Regulation VIII of 1793 prescribes: "It is to be understood, however, that istemraridars (mokuraridars) of the nature of those described in section 18, who have held their land at a fixed rent for more than twelve years, are not liable to be assessed with any increase either by the officers of the Government or by the zemindar or other actual proprietor of land, should he engage for his own lands. With regard to such istemraridars also, as have not held their lands at a fixed rent for so long a period, if the zemindar or other actual proprietor of land has bound himself by the deed, which he may have executed not to lay an increase upon them, he shall not be allowed to infringe the conditions of the deed for his own benefit, but must confine his demands to the rent he may have voluntarily agreed to receive"—See section 50 of the Act and the notes under it. Tenures held from the time of the Permanent Settlement are *prima facie* not liable to enhancement except on proof, &c., and under this section. If they are proved to be liable to enhancement, the

This section is modified by section 49 of Regulation VIII of 1793 and section 50 of this Act.

tenant may again demand the presumption of section 50; on the other hand, if they are exempted from enhancement under this section, section 50 will not render them liable to enhancement. In *Hurro Nath v. Gobind Chunder* 23 W. R., (P. C.) 352, their Lordships observe: "It may, however, be well to consider whether the High Court was right in holding that the defendant was, by section 15 of Act X of 1859, protected from enhancement in any case and upon any grounds. To bring the case within that section, he must hold his tenure otherwise than under a terminable lease, and he must also hold at a fixed rent, which has not been changed from the time of the Permanent Settlement. It should be remarked that section 15 does not render liable to enhancement dependant talukdars, who were exempted by section 51, Regulation VIII of 1793, but exempts from enhancement, amongst others, dependant talukdars who, under the provisions of that section, might otherwise be liable to enhancement." (See *Nobo Kishore v. Paudal Sirkar*, 8 W. R., 312; *Dhanput Singh v. Guman Sing*, 9 W. R., (P. C.) 3; *Musst. Mahamaya v. Massamut Dayamayi* 7 W. R., 63).

Tenures held from the time of the Permanent Settlement.—

Shikmi taluks or
tenures as distinct from
proprietary taluks.

important of these tenures are taluks. Some of these have existed from before the Permanent Settlement, and are known by the generic term *shikmi mukurari* or dependent taluks. The existence of these taluks, is traceable in sections 6 to 8 of Regulation VIII of 1793, which have been repealed by Act XVI of 1874. Section 6 provided: "The proprietors of taluks who now pay the public revenue assessed upon their lands through a zimindar or other actual proprietor of land, and whose title-deeds contain a clause stipulating that their revenue is to be paid through him, shall continue to pay their revenue through such zemindar or other actual proprietor of land as heretofore." Section 7 provided: "Talukdars whose taluks are held under writings or sunnuds from zemindars or other actual proprietors of lands, which do not expressly transfer the property in the soil, but only entitle the talukdar to possession, so long as he continues to discharge the rent, or perform the conditions stipulated therein, are considered as lease-holders only, not actual proprietors of the soil, and consequently are not entitled to be rendered independent of the zemindar or other actual proprietor of land, from whom they derive their tenure, provided they now pay the rent assessed upon their taluks to him." And section 8 provided: "Talukdars also whose tenure is denominated *jungleboori*, and is of the following description, are not considered entitled to separation from the proprietors of whom they hold. The pottas granted to these talukdars, in consideration of the grantee clearing away the jungle, and bringing the land into a productive state, give it to him and his heirs in perpetuity, with the right of disposing of it, either by sale or gift, exempting him from payment of revenue for a certain term, and at the expiration of it, subjecting him to a specific *assul jumma* with all increases, *abreabs* and *malhtotes* imposed on the pergunna generally; but this for such part of the land only as the grantee brings into a state of cultivation; and the grantee is further subject to the payment of a certain specified portion of all complimentary presents and fees, which he may receive from his under-tenants, exclusive of the fixed revenue. The potta specifies the boundaries of the land granted but not the quantity of it, until it is brought into cultivation." Sections 5 and 9, which have also been repealed by Act XVI of 1874, described talukdars who were considered proprietors and not merely tenure-holders. Section 5 provided: "First.—The talukdars to be considered actual proprietors of the lands composing their taluks are the following: Second.—Talukdars who purchased their lands by private, or at public sale, or obtained them by gift from the zemindar, or other

actual proprietor of land to whom they now pay the revenue assessed upon their taluks, or from his ancestors, subject to the payment of the established dues of Government, and who received deeds of sale or gift of such land, from the zemindar, or sunnuds from the *khalsa*, making over to them his proprietary rights therein. *Third.*—Talukdars whose taluks were formed before the zemindar or other actual proprietor of land to whom they now pay their revenue, or his ancestors, succeeded to the zemindari. *Fourth.*—Talukdars, the lands comprised in whose taluks were never the property of the zemindar or other actual proprietor of the soil to whom they now pay their revenue, or his ancestors. *Fifth.*—Talukdars who have succeeded to taluks of the nature of those described in the preceding clauses, by right of purchase, gift or inheritance from the former proprietors of such taluks.” Section 9 prescribed: “The rules in section 5, respecting taluks, have also been extended to *ayna* lands liable to the payment of a fixed quit revenue, denominated *malguzari aynas*; and agreeably to the distinctions laid down in that section, it has been ordered, that such *malguzari ayna* tenures as are held under grants of the Mahomedan Government, previous to the Company’s accession to the Dewany, or which have been since granted by proprietors of estates for a consideration received by them, are to be separated from the proprietors to whom their revenue is now paid, as coming within the spirit of the rules for the separation of talukdars, who are proprietors of the lands composing their taluks. But *malguzari ayna* tenures, which may appear to have been *bonâ fide* granted for the purpose of bringing waste lands into cultivation, shall continue included in the estates to which they are now annexed, as coming within the rules in section 8, respecting jungleboori taluks.”

The holder of a *maghalce* or a *tullubi bromottur* or a permanent and transfer-
Tullubi Bromotur. able intermediate tenure which has been in existence from the time of the decennial settlement is entitled to a notice under section 51 of Regulation VIII of 1793—(Raja Nilmoni v. Ram Chukravarti, 21 W. R., 439.) It is not a lakhiraj tenure, but the holder is entitled to the benefit of this section—(Rajah Nilmoni v. Chunder Kant, 14 W. R., 251; Dina Nath v. Gogun Chander 14 W. R., 274). A *tullubi bromottur* has been held as such from the time of the decennial settlement and is a permanent intermediate tenure entitling the holder to a notice of enhancement under Regulation VIII of 1793—(Nilmoni v. Chander Kant, I. L. R., 2 Cal., p. 115; 25 W. R., 200.) Where grants of land had been made prior to the Permanent

Ghatwali tenures. Settlement on ghatwali tenure at a fixed rent, and the Government subsequently dispensed with the services on the part of the zemindar, Held in a suit by the zemindar to enhance the rents, that as long as the ghatwals were able and willing to perform the services, the zemindar had no right to enforce payment of an enhanced rent on the ground that the services were no longer required. The ghatwals are dependant talukdars within the meaning of Regulation VIII of 1793, and are protected from enhancement by clause 1 of section 51 of that Regulation—(Leelanund v. Thakur Munorunjun, I. L. R., 3 Cal., 251.) A *tuk-sheeshi* taluk is an intermediate tenure which can be protected under this section. (Sreemati Jannobi v. Grish Chunder, 15 W. R. 335.)

But the section applies to tenures held from the time of the permanent settlement and not to raiyati holdings. *Kadimi* or old (i. e., occupying by its hereditary descent) raiyats do not fall within this section, and their Lordships of the Privy Council expressly said that they were not prepared to affirm a remark of the Sadar Dewani Adalat that the analogy of this section extends to them—(Ram Chunder v. Jogesh

Chunder, 19 W. R., P. C., 353; 12 B. L. R., 229; 2 P. C. R., 836; Eshan Chunder, v. Hurish Chunder, 24 W. R., 147.) Section 51, Regulation VIII of 1793 refers solely to dependent talukdars, and does not protect from, enhancement persons whose tenures are terminable at the end of any year or at the pleasure or caprice of their zemindars—(3 W. R., 172.) Nor does the section apply to taluks held under

Terminable tenures. writings, sunnuds, or other documents granted by proprietors, which do not expressly transfer the property in the suit. These persons, as will be seen from section 7, are treated under Regulation VIII of 1793 as lease-holders only—(Rajah Satyanuud v. Huro Kishore, 15 W. R., 474.)

In a suit for enhancement under Regulation VIII of 1793, the onus is on the zemindar to prove that a dependant talukdar is liable to enhancement, the nature and extent of proof varying according as the tenure falls within section 49 or 51. To bring a taluk within section 51 it is sufficient to show that the tenure existed and was capable of being registered at the date of the decennial settlement—(Bama Sundari v. Radhika, 13 W. R. P. C., 11; 2 P. C. R., 293; 13 Moo., 248; 4 B. L. R. P. C., 16.) This case was decided under the law before the passing of Act X of 1859. It was here held that actual registration under the 48th section is not essential to the existence of a taluk under the 51st section; and that proof of the existence of such a taluk at the time of the decennial settlement throws on the zemindar the burden of proving that the rent is variable. It was remarked in the same case that a suit to enhance the rent proceeds on the presumption that a zemindar holding under the perpetual settlement has the right from time to time to raise the rents of all the rent-paying land within his zemindari according to the pergunnah or current rates, unless, either he is precluded from the exercise of that right by a contract binding on him, or the land in question can be brought within one of the exemptions recognised by Bengal Regulation VIII of 1793—(Gopal Lall v. Teluk Chundra, 10 Moo. 1. A., 183; Susti Churan v. Ishan Chunder, 22 W. R., 383. But see Ahsanullah v. Basarat Ali, 1. L. R. 10 Cal., 920.)

To bring a taluk within section 51 it is sufficient to show that the tenure existed and was capable of being registered at the date of the decennial settlement—(Bama Sundari v. Radhika, 13 W. R. P. C., 11; 2 P. C. R. 293; 13 Moo., 248; 4 B. L. R. P. C., 16.)

Section 51, Regulation VIII of 1793, could not apply to tenures the holders of which cannot show that their tenure existed, and was capable of being registered at the date of the decennial settlement—(Eshan Chander v. Harish Chander, 24 W. R. 146.)

A dependant talukdar, whose tenure was in existence before the Permanent Settlement, is entitled to protection under section 49, Regulation VIII of 1793, unless his zemindar can prove a title to enhancement under section 51—(1 W. R., 367.) Under section 49, Regulation VIII of 1793, a suit for enhancement is barred by proof of the existence of a tenure from the decennial settlement, unless the plaintiff is an auction-purchaser, in which case he must show when he purchased, before he can insist on proof of the existence of the tenure twelve years before the settlement—(Ramesh Chunder v. Madhu Sudan 5 W. R. 232.) The mention of a tenure in a jumabundi prepared seven years before the decennial settlement affords presumption of the existence of the tenure twelve years before that settlement—*Id.* A patnidar is protected from enhancement under section 15, Act X, notwithstanding a decree passed before that Act by which the zemindar was declared entitled to enhance, the latter having omitted to take any effectual step before that Act to vary the rent since the decennial

settlement—(Gobind Chunder v. Huro Nath, 5 W. R., Act X, 10.) A declaration in a former suit that the defendant's taluk is not protected from enhancement either under section 16 or section 77, Act VIII of 1169 (B.C.), does not relieve the plaintiff from the necessity of proving a case under section 51, Regulation VIII of 1793, under which alone he can maintain his suit—(Susti Churun v. Ishau Chunder, 22 W. R., 383. See also Ram Kumar v. Khajah Abdul Gunny, 2 Sev., 840; Radhika v. Bama Sundari 1 W. R., 339; and on appeal to the Privy Council, 4 B. L. R., P. C., 8, and 13 Mor. In. Ap., 49.)

"The defendant said that he was a shamilat talukdar, as would seem to be the substance of the allegation within the meaning of section 5, Regulation VIII of 1793. *** We think this case must be remanded to the Judge, and he will find upon the evidence, *firstly*,—whether the defendant is or is not a talukdar of the nature described in section 5, Regulation VIII of 1793. If the Judge should find in favor of the defendant on this point, he will dismiss the plaintiff's suit. If he finds against the defendant, then it will be his duty to see whether the defendant is or not a defendant talukdar protected by the provisions of section 51, Regulation VIII of 1793. If the Judge find in favor of the defendant on this point, he will dismiss the plaintiff's suit, because no notice within the meaning of the section quoted has been served upon the defendant in this instance. If the Judge should find against the defendant on this second point also, then it will be his duty to see whether the defendant is a person protected by the provisions of section 16, Act X of 1859, and on this point both the parties will be given opportunity of adducing evidence *pro* and *con*. If again the Judge should find that the defendant is a person protected by the provisions of section 16, he will dismiss the plaintiff's suit. If he should find adversely to the defendant on this point also, then it will be his duty to determine what is the fair and equitable enhanced rent, if any, within the terms of the notice"—(Sharoda Prosanno v. Bipin Bihari 13 W. R., 71.) A dependant talukdar sued for enhancement is entitled to a finding not only on the question whether by proving holding for twelve years before the Permanent Settlement, he can put the plaintiff out of Court, but also on the question whether by holding from the Permanent Settlement, he cannot claim the protection given by section 51 (Regulation VIII of 1793.—1 W. R., 37. See also Sevestre, 175).

Procedure to be adopted in a suit for enhancement where defendant pleads that he is a shamilat talukdar.

Local custom:—Compare section 31 (c) *post*.

By the Conditions under which the tenure is held:—Compare section 29 *post*. See notes under section 181.

Otherwise than on account of a diminution of the area of tenure. See section 52 and notes.

The question of notice is under the present law unimportant, because the

provisions about notice of enhancement have been thrown away, the suit for enhancement being itself considered as a sufficient notice (section 154. See Brojosundar Mittra v. Kali Kishore, 8 W. R., 479; Nilmoney Sing v. Ram Chukravarti, 21 W. R., 439; Sreemuty Jannohee v. Grish Chunder, 7 B. L. R., App., 47; Tarini Kanta v. Kunjo Bihari, 12 W. R., 112; Kristo Chunder v. Elahi Bux, 20 W. R., 459; Nobokishen v. Mazumuddin Ahmed, 19 W. R., 338; Ram Nidhi v. Parbati Dasi, 1 L. R., 5 Cal., 822; sections 14 of Act VIII of 1869 B.C., 15 of Act X of 1859, Regulation V of 1812.) As to whether a notice will be still equitably indispensable, see notes under section 30.

This difficult question was discussed in the case of Jugut Chunder Dutt v. Panioty, 8 W. R., 427, and 9 W. R., 379, which came

Are dependant talukdars protected from an increase of rent in respect of accretions by alluvion to their taluks?

before the Calcutta High Court three times in appeal and once in review. Plaintiffs sought to enhance the rent of the defendants, alleging that the latter held a temporary (*gair bundobusti*) zimma taluk within their estate; that by the action of the river a new chur had been formed which defendants held, thereby occupying 40 droons of land in excess of the zimma. Defendants pleaded that these 40 droons were not an accretion, but a portion of the zimma which had diluviated and reformed on its original site. The lower Appellate Court held that this suit could not lie, as brought under Act X of 1859. The High Court on appeal reversed this decision and remanded the case for retrial on the merits, whereupon the lower Court found, among other points, that the 40 droons of land was an accretion and not a re-formation. On a second appeal to the High Court, it was urged that such accretion, as an increment to the original tenure, was protected, and that with adverbence to section 4, Regulation XI of 1825, a single demand of rent could only be made for the whole estate, and therefore there could be no increase. As to this latter contention, the High Court remarked that so far from this section saying that accretions to a subordinate tenure shall be rent-free, it expressly declared them liable for rent, if payable by usage or contract. The case was then remanded to try, amongst other points, 1st, whether defendant had proved his right to hold the zimma tenure at a fixed rent under sections 15 and 16 of Act X of 1859, 2nd if the zimma tenure were held at a fixed rent, is it according to the custom of the country liable to any, and if so, what, increase on account of alluvion? (6 W. R., Act X, 1848.) The lower Appellate Court decided that defendants had proved themselves entitled to the benefit of the presumption of law in section 16, Act X of 1859, and were therefore entitled to hold the zimma tenure at a fixed rent. It also found (apparently not trying the exact issue laid down on remand) that there was no custom proved under which the accreted land could be held rent-free; and held that in the absence of proof of such a custom, the tenant was liable to pay rent therefor. The High Court remarked that the burden of proof had been thus wrongly put upon the defendants who held the zimma tenure; yet as the plaintiff had sued for a kabuliyat on an alleged right to assess the accreted land, it was for him to have proved this allegation. On this ground, judgment was given for defendants. The Court further proceeded to hold that reading together section 51, Regulation VIII of 1793, section 4, Regulation XI of 1825, and section 15, Act X of 1859, the zemindar was not entitled to assess (i. e., to claim an increase of rent in respect of) the accretions to the defendant's zimma tenure (18 W. R., 427.) A review of judgment was asked for, and the points raised above were argued. The Court refused to alter their former judgment; but this judgment was based mainly on the 1st of the above grounds. Mitter, J., expressly said that his remarks as to the accretion being liable to rent were to be regarded as an *obiter dictum*. Bayley, J., however, observed that section 17, Act X of 1859, could have no bearing upon the case, as being applicable to raiyati tenure only, and not to those of a taluki character; that he was not shown, nor was he aware of any law, except section 51, Regulation VIII of 1793, which provides for the assessment of such accretions; that clause 1, section 4, Regulation XI of 1825, leaves the substantive law on this point exactly as it was before; and that holders of the nature of the defendants are not liable under section 15, Act X of 1859, until it be shown that their tenures were created subsequent to the decennial settlement, and held not at a fixed jumma (9 W. R., 379): As to the present law on the subject, see section 52 and notes.

See also *Baboo Gopallal Thakur v. Kamar Ali*, 6 W. R., 1887, where the taluk having been recently created, and therefore not protected by section 15, Act X of 1859, the Court observed that the question would mainly depend upon the engagements of the parties. A zemindar sued to enhance the rent of a talukdar, and in 1860 the late Sadar Court affirmed his right to enhance, though from his failure to serve the notice required by law, the talukdar was not then liable to pay rent at any enhanced rate. He then proceeded under Act X of 1859 to enforce payment of an enhanced rate of rent, grounding his right to do so on the decree of the Sadar Court. It was held that he could not succeed, the High Court remarking as follows: "We think that the right of the plaintiff suing under Act X of 1859 with this decree in his hand, stands no higher than the right of any other landlord, who, previous to the passing of the Act, would have a good right to enhance, but whose right by the passing of the Act was taken away. He has taken no effectual steps by which the rent has been raised since the decennial settlement, and the legislature has stepped in and finally protected the talukdar"—(*Gobind Chunder v. Hara Nath* 1 In. Jur., 52, upheld on appeal by the Privy Council, 2 L. R., I. A., 193, and 23 W. R., 353.)

As to whether a talukdar is entitled to abatement of rent on the ground of diluvion, Peacock, C.J., said: "We think he is so entitled, unless there was an express stipulation that he should not, whether the land was washed away or not. If a man stipulates to pay rent it is clear he engages to pay it as a compensation for the use of the land rented; and independently of section 15, Act X of 1859, we are of opinion that, according to the ordinary rules of law, if a talukdar agrees to pay a certain amount of rent, the tenant of it is exempt from the payment of the whole rent if the whole of the land be washed away, or a portion of the rent, if a portion only be washed away"—(*Assaruddin v. Sharashibala*, Marsh. 1558.) On both these points, see however section 52 *post*, which is an assessment section.

Regulation XLIV of 1793, section 5, provided: "Whenever the whole or a portion of the lands of any zemindar, independent talukdar, or other actual proprietor of land shall be disposed of at public sale for the discharge of arrears of the public assessment, all engagements which such proprietor shall have contracted with dependant talukdars whose taluks may be situated in the lands sold, as also all leases to under-farmers, and pottas to raiyats, for the cultivation of the whole or any part of such lands (with the exception of the engagements, pottas and leases specified in sections 7 and 8), shall stand cancelled from the day of sale; and the purchaser or purchasers of land shall be at liberty to collect from such dependant talukdars, and from raiyats or cultivators of the lands let in farm and the lands not farmed, whatever the former proprietor would have been entitled to demand according to the established usage and rates of the pergunnah or district in which such lands may be situated, had the engagements so cancelled never existed." Following are, however, exceptions: "Nothing contained in this Regulation shall be construed to prohibit any zemindar, independent talukdar, or other actual proprietor of land selling, giving or otherwise disposing of any part of his lands as a dependant taluk" (section 6). "Nor to authorize the assessment of any increase upon the lands of such dependant talukdars as were exempted from any increase of assessment at the forming of the decennial settlement in virtue of the prohibition contained in clause 1, section 51, Regulation VIII of 1793. The revenue payable by such dependant talukdar is declared fixed for ever, and their lands are accordingly to be rated at such fixed assessment in all divisions of the estate in which their taluks are included."

The auction-purchaser and avoidance of incumbrances.

(section 7). "Nor to prohibit the actual proprietors of land granting without the sanction of Government or its officers, to any person, not being a British subject or a European, a lease or potta for ground for any term of years or in perpetuity, for the erection of dwelling houses, or buildings for carrying on manufactures, or for gardens or other purposes, and for offices for such houses or buildings" (section 8). It has been held that section 5 of Regulation XLIV of 1793 cancelled fanning leases, but kept alive the tenures of talukdars, these only being liable to enhancement up to the pergunnah or customary rates—(*Khajah Assanoollah v. Obhoy Chunder*, 13 Moo. I. A., 317 at p. 325.) The Judicial Committee of the Privy Council have expressed considerable doubt as to whether this section is now in force—(*Rani Surnomoyi v. Maharajah Sutish Chandra*, 10 Moo. I. A., 123 at p. 143; *Rajah Satyasuran v. Mohes Chunder*, 2 B. L. R., P. C., 23; *Rajah Leelanund v. Thakur Munarunjun, Singh*, 13 B. L. R., 124.)

Regulation V of 1812, section 4, after reciting section 5 of Regulation XLIV of 1793, provided that a purchaser shall not annul existing leases within the year in which the sale may have taken place on the ground that such leases were evidently collusive, without a summary suit under Regulation VII of 1799; and section 9 provided that a tenant shall not be bound to pay an enhanced rate to a purchaser at a revenue sale without a written engagement or notice, although liable to enhancement. The rates to which the tenants may be enhanced are the pergunnah rates; or if none, the rates payable for land of a similar description in the places adjacent; or if the leases of a whole village or local division are liable to be cancelled, the new rate shall not be higher than the highest rate paid during the three previous years (sections 7 and 8). In an important case before the Judicial Committee of the Privy Council, the plaintiff sued for an enhanced rent. He claimed under a private purchase from a person who bought from an auction-purchaser at a sale in 1823 for arrears of revenue. The defendant, a talukdar, claimed to be exempt from enhancement on the ground that she and her predecessors in title had held at a fixed rent from a time previous to the decennial settlement. It was held (assuming section 5 of Regulation XLIV of 1793 not to be virtually repealed, as to which their Lordships expressed considerable doubt) that the purchaser at the auction sale had only an option under Regulation XLIV of 1793 to enhance the rent, and could not disturb the possession of the tenant, and that consequently the plaintiff and his predecessors, by continuing from the commencement of the tenure, during a period of more than sixty years, to receive the same rent, had waived their right to enhance, the option being one which ought to be exercised at the beginning of the auction purchase—(*Rani Surnomoyi v. Maharajah Suteesh Chunder*, 10 Moo. I. A. 123. See also *Jugal Kishore v. Khajeh Ashan Ullah*, 4 W. R., Act X, 6; *Rajah Satya Surun v. Mohesh Chunder*, 2 B. L. R., P. C., 23; 12 Moo. A. I., 263; 11 W. R., P. C., 23; *Khajeh Ashan Ullah v. Obhoy Chunder*, 13 Moo. I. A., 317; 13 W. R., P. C., 24.) They remarked that the right to enhance is in terms only given to the auction-purchaser himself, and not to his assignees—(*Rani Surnomoyi v. Maharajah Suteesh Chunder*, 10 Moo. I. A., 123 at p. 148; 1 Morley's Dig. 408, pl. 32.) They further observe that the foundation of the provisions of the Regulation for cancelling under-tenures is that it is assumed that the default of the zemindar may have been occasioned by improvident grants at inadequate rents; that this was in breach of the condition on which the fund was originally created by the Sovereign, and the purchaser therefore is set free from the obligation of these grants, with certain specified exceptions, and with certain limitations of his power as to new tenancies to be created. These provisions must, however, be strictly construed. The Regulation did not authorize a

wanton and unjust disturbance of vested interests where the grants made were at proper rents. Consequently no absolute cancellation was intended; the power given assuming the talukdars and raiyats to remain in all respects as before, except that they became liable to an increase of rent up to the pergunnah rates. The result is that the power given to the auction-purchaser has virtually no operation where the rent already paid is at the pergunnah rate—(*Ranee Surnomoyi v. Maharajah Suteesh Chunder*, 10 Moo. T. A., 123 at p. 142 and 147; *Rajah Satyasuran v. Mohesh Chunder*, 2 B. L. R., P. C., 23 at p. 31; *Kurunaker Mahati v. Niladhro Chowdry*, 5 B. L. R., 652.)

Act XII of 1841 and Act I of 1845 and Act XI of 1859 made further provisions upon this subject. By section 27 of Act XII of 1841, a purchaser of an estate sold under the Act for arrears of revenue due in respect thereof in the permanently settled districts of Bengal, Bihar, Orissa, and Benares (Benares is omitted in section 37 of Act XI of 1859), shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement; and shall be entitled, after notice given under section 10 of Regulation V of 1812, to enhance at discretion (anything in the existing Regulations notwithstanding) the rents of all under-tenures in the said estates and to eject all tenants thereof with certain exceptions. Act I of 1845, section 26, is the same in terms; but Act XI of 1859, section 37, enacts that the purchaser shall be entitled to avoid and annul all under-tenures, and forthwith to eject all tenants, omitting the provision for notice. These provisions have been held to get rid of a title created by adverse possession—(*Thakooradas v. Nubeen Kishan*, 15 W. R., 552). But an auction-purchaser, it has been held, cannot enhance clur lands accreted and assessed since the decennial settlement, except under section 51 of Regulation VIII of 1793, and clause 2 of this section and of section 26 of Act VII of 1845. Such a tenure must be treated as if it dated from before the decennial settlement—(*Kishen Kinkur v. Brown*, S. D. A. (1858) 1512.)

Interests not liable to be cancelled The following interests are not liable to be cancelled, and are known as exceptions to the general rule.

(1). Tenures which were held as *istemrari* or *mokurari* at a fixed rent more than twelve years before (from the time of Act XI of 1859 section 37) the Permanent Settlement—Act XII of 1841, section 27, clause 1; Act I of 1845, section 26, clause 1; Act XI of 1859, section 37; and Act VII of 1868 B. C.

(2). Tenures existing at the time of the decennial settlement, but not proved to be liable to increase of assessment upon grounds stated in section 51, Regulation VIII of 1793—Act XI of 1841, section 27, clause 2, and Act I of 1845, section 26, clause 2. The corresponding clause 2 of section 27 of Act XI of 1859, and section 12 of Act VII of 1868 B. C., omit all reference to Regulation VIII of 1793, and except tenures existing at the time of the Permanent Settlement which have not been held at a fixed rent. They run as follows: "Tenures existing at the time of the settlement which have not been held at a fixed rent, provided always that the rents of tenures shall be liable to enhancement under any law for time being in force for the enhancement of such tenures." Under the older Acts the auction-purchaser was to prove liability to enhancement, but under Act XI of 1859 and Act VII of 1868 B. C., the tenant is to prove that he held at a fixed rent from the time of the Permanent Settlement. The twenty years' presumption (section 50 *post*), however, renders this easy.

(3). Lands held by *khudkasht* or *hadimi* raiyats having rights of occupancy at fixed rents or at rents assessable according to fixed rules under the Regulations and Acts in force—Act XII of 1841, section 27, clause 3, and Act I of 1845, section 26, clause 3. This exception is omitted in Act XI of 1859. Mr. Field says that they are replaced by the exemption given to occupancy raiyats from

ouster, though not from enhancement—Field's Regulations (p. 94). Mr. Phillips says that "in place of this talukdari or other similar tenures are excepted by Act XI of 1859, such tenures being created since the time of the settlement, and held immediately of the proprietors of the estates, as well as farms for terms of years so held, when such tenures and farms have been duly registered under the Act." Act VII of 1868 (B. C.) omits this provision altogether.

(4). Lands held under *bond file* leases at fair rents, temporary or perpetual, for the erection of dwelling-houses, or manufactories, or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or the like beneficial purposes, such lands continuing to be used for such purposes—Act XII of 1841, section 27, clause 4, and Act I of 1845, section 26, clause 4. By Act X of 1859, section 37, clause 4, this provision is modified and includes leases ('or tenures,' Act VIII of 1868 B. C.) of land whereon dwelling-houses, manufactories, or other permanent buildings have been created, or whereon ('permanent,' Act VII of 1868 B. C.) gardens, or plantations, tanks, wells (omitted in Act VII of 1868, section 12) canals, places of worship, or burning or burying grounds have been made, or mines (omitted in Act VII of 1858 B. C.) have been sunk. And it is further provided that such a purchaser of an estate or tenure shall be entitled to proceed in the manner prescribed by the law, for the enhancement of the rent of any land in this clause, if he can prove the same to be held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent equal to the rent of good arable land for a term exceeding twelve years (but not otherwise—Act VII of 1868 B. C.).

(5). Farms granted in good faith at fair rents and for specified arrears by a former proprietor for terms not exceeding twenty years, under written leases registered within a month from their date. Provided that written notice be given to the Collector, who shall be at liberty to object if the revenue is likely to be affected. The purchaser may set aside such farms by a suit if not granted in good faith, and at fair rents—Act XII of 1841, section 37, clause 5, and Act I of 1845, section 26, clause 5. This provision is repealed by Act XI of 1859, and has no place in Act VII of 1868 B. C. Mr. Field says that the 3rd clause of section 37 of Act XI of 1859 somewhat supplied its place, *e. g.*, "talukdari and other similar tenures, &c."

(6). Purchaser is not entitled to object any raiyat having rights of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force, or to enhance the rents of such raiyats otherwise than in the manner prescribed by such laws or otherwise than the former proprietor, irrespective of all engagements made since the settlement, may have been entitled to—Act XI of 1859, section 37, and Act VII of 1868, section 14. This had no place under the older Acts, unless it came under clause 3.

(7). Tenures created or recognised by the settlement proceedings of any current temporary settlement, as the tenure bearing a rent which is fixed for the period of such settlement—Act VII of 1868 B. C.

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

Limits of enhancement of rent of tenures.

Where the rent of a tenure-holder is liable to enhancement.—See notes under section 6. An old decision of a Registrar's Court between the ancestors of

the parties, by which the defendant's ancestor recovered possession of the tenure described as a taluk under section 5, Regulation VIII of 1793, was held insufficient to prove the payment of uniform rent for more than 12 years prior to the decennial settlement. The plaintiff was held not entitled to any rent at the enhanced rate until his demand was effectively made in Court; but as he had not succeeded in making good his claim to the rates demanded, he could only recover the rate of rent fixed by the Court from the date of the decree—1 Hay, 459. A suit for enhancement is not maintainable against the descendant of the grantee of a hereditary conditional jagheer. The zemindar must first sue to resume, on the ground that the jagheer has been determined by breach of the condition through neglect of the service—Marshall, 518. Act X of 1859 exempts from enhancement tenants who have held at a fixed rent from the time of the Perpetual Settlement whether under *istemrari* or *mokurari* pottas or not. Even under the sale law, a suit for enhancement cannot be maintained if the defendants prove that their taluk was fixed and paid rent at a uniform rate more than 12 years before the Perpetual Settlement—1 R. J. P. J., 216; Sevestre, 756. In a suit under the old law for the enhancement of rent as a taluk, it was held that, although the defendant set up a defence under section 49, Regulation VIII of 1793, the Court should have framed a further issue, whether failing that issue, he was entitled to the benefit of section 51—(Sev., 175; Bamasundari v. Radhika Chowdrain 13 W. R. P. C. 11.) A tenure which existed upon its present jama in 1783, and has since paid the same amount of rent without challenge, may be presumed to have existed previously so as to be protected from enhancement—(Romesh Chunder v. Gooroodas, Sp. W. R., 204.) A lakheraj shown to have been held prior to 1790 cannot be assessed until in a resumption-suit, the plaintiff succeeds in getting a declaration entitling him to resume the lakheraj—1b. Moostagirs are protected from enhancement not as raiyats but as intermediate tenants, under section 15 and 16, Act X of 1859—(Baboo Dhunput v. Baboo Gooman Sp. W. R. (Act X) 61; 2 R. J. P. J., 267). When a tenure was, or has become, hereditary and transferable, and the rent has not been changed from the time of the Perpetual Settlement, the tenant, being intermediate between proprietors and raiyats, is protected from enhancement by section 15, Act X of 1859—(Baboo Dhunput Sing v. Gooman Sing, 9 W. R. P. C. 3.) Jungleboori tenures, howlas are liable to enhancement—(1b.; Bhurut Chunder v. Goura Mani, 11 W. R. 31.) The fact that a mukuridar has for any reason agreed to pay an enhanced rent to one shareholder does not entitle another shareholder to demand the enhanced rent, except according to section 13—(Salgram Opadhyay v. Maharaja, Moheswar Bux, Sp. W. R., Act X, 94.) A taluk with a fluctuating rent is not protected from enhancement under section 57, Regulation VIII of 1793—(1 W. R. 339; see Madhyb Chunder v. Radhika Choudrain, 6 W. R. (Act X) 42.) A neem usat talukdar cannot enhance a howladar's rent, where the howladar holds under a potta granted to him by Government with a fixed rate—(2 W. R., 7.) A howladar who is in reality a cultivating raiyat is not protected against enhancement—(3 W. R. (Act X) 11; 4 R. J. P. J., 392.) A potta giving land for building purposes and reciting that there should be no abatement of rent or increase of jumma was held to grant the land at the rate then fixed for ever, even though no such words as *istemrari*, &c., were used—(Benodo Behari v. Mr. C. B. Massayk 15 W. R., 493.) A surbarakari tenure is a permanent transferable tenure liable to enhancement—(Sudanunda v. Nurottum 16 W. R., 288; Kashenath v. Lakhmoni 19 W. R., 99).

May be enhanced:—There is much conflict of decisions on the question whether co-sharers are entitled to sue for enhancement of rent. See section 188 and notes *post*. The earlier decisions seem to be that one of several joint proprietors of an estate can maintain a suit for enhancement of his share of the rent without a butwara

Are co-sharers entitled to sue for enhancement of rent.

—(*Troylohotaran v. Mathura Mohun Sp. W. R.* (Act X) 41; 2 R. J. P, J. 202; *Ram Lochun v. Actambur, Sp. W. R.*, (Act X) 111). So the proprietor of a fractional share of an undivided estate has a right to sue for a kabulyat for such share, if he can prove that the defendants have hereto-fore recognized him as the proprietor of a particular share and paid him separately a certain proportion of the rent—(*Romanath v. Chand Huri* 14 W. R., 432; 6 B. L. R., 356, S. C. So also *Gunganarain v. Sharoda Mohan*, 12 W. R., 30; 3 B. L. R. A. C. 230; *Rakhal Chunder v. Mahtab Khan* 25 W. R., 221; and *Doorga Prosad v. Joynarain*, 1 L. R., 2 Cal., 474 (overruled). See 1 L. R., 3 Bom., 23.) *Per contra* in *Sarat Sundari v. Watson*, 2 B. L. R., A. C., 159, 11 W. R. 25, it was decided that neither Act X of 1859 nor any decision of the High Court gives authority to a party who is entitled to a fractional share of an undivided estate, though he may be receiving a definite portion of the rent from the tenant or raiyat, to maintain a suit for kabulyat in respect of such undivided share. The Rent Law contemplates only the giving of pottas of entire holdings and kabulyats of entire rents. (So also in *Udaya Churn v. Kali Tara*, 2 B. L. R. Ap., 52; 11 W. R., 393); and a single co-sharer cannot sue for his share of rent, much less for enhanced rent—(*Bhyrub v. Gogaram*, 17 W. R., 408; *Haradhan v. Ram Newaz*, *ib.* 444; *Raj Chunder v. Rajaram*, 22 W. R., 385. See also *Indur Chundra v. Bindalan Behara*, 15 W. R., F. B., 21; 8 B. L. R. 251.)

The point may now be considered as settled by the Full Bench decision in the case of *Gunce Muhomed v. Moran*, and *Durga Prosad Mytee v. Joynarain Hazrah*, 1 L. R., 4 Cal., 96, F. B. In this case, the learned Chief Justice (Garth, C.J.) observes: "It has been constantly held in this Court, and must be considered now as well-established law, that each co-sharer may bring a separate suit against the tenant for his share of the rent (when he is in the habit of collecting rent from him separately). But in the absence of such an arrangement it is equally clear that no such suit can be maintained. (See *Ganganarain Das v. Saroda Mohan Roy Chowdry*, 3 B. L. R., A. C., 230; 12 W. R., 30; *Sree Misser v. Crowdy*, 15 W. R., 243; *Deno Bundhoo Kundoo Chowdry v. Deno Nath Mukerji*, 19 W. R., 163, and *Musst. Lalau v. Hemraj Singh*, 20 W. R., 76). But a suit for a kabulyat under such circumstances by one co-sharer against the tenant is a very different thing from a suit for arrears of rent. The separate suit for arrears, as I have already said, is perfectly consistent with the continued existence of the original lease of the tenure. A kabulyat, by which an entirely new and separate tenancy is created, is obviously inconsistent with it. A suit for arrears deals only with the past. A suit for kabulyat binds the tenant in the future. In fact it is binding upon both parties, because the co-sharer who obtains a kabulyat is bound, at the request of the tenant, to give him a potta upon the same terms, and the grant and acceptance of a binding lease of the separate share cannot exist contemporaneously with the original lease of the entire jote. This is quite in accord with the view of Norman, acting C. J., and *Dwarkanath Mitter*, J., in the Full Bench case of *Indur Chunder Dugar v. Brindaban Behara*, 15 W. R., 21, in which Mr. Justice Mitter points out the distinction between a mere separate payment of rent to a co-sharer and a claim for a kabulyat as to the separate share. The

only authority to the contrary appears to be the decision of Bayley and Paul, J.J., in the case of *Romanath v. Chand Huri*, 6 B. L. R., 356; 14 W. R. 432, but it is not clear from that case, whether the tenure had ever been held at an entire rent; and at any rate the distinction between a separate payment of rent by arrangement, and a binding lease of a separate share, does not seem to have been considered. Of course if the original lease of the entire tenure is cancelled, or put an end to by the consent of all the parties, the co-sharers and the tenant are at liberty to enter into any fresh contracts which the law allows; but no Court of Justice ought to presume such a cancellation or determination of the lease from the mere fact of a separate payment of rent to one or more of the co-sharers. The right of one co-sharer to enhance the rent of his share separately must be governed by the same principles as his right to a *kabuliyat*. The Rent Law in our opinion does not contemplate the enhancement of a part of an entire rent; and the enhancement of rent of a separate share is inconsistent with the continuance of the lease of the entire tenure." One co-sharer cannot (even if he make his co-sharers parties to his suit) sue for the enhancement of his share of the rent. Such an enhancement being inconsistent with the continuance of the lease of the entire tenure—(*Bharut Chunder v. Kally Das*, 1 L. R., 5 Cal., 574). The Full Bench ruling was held not applicable where the butwana proceedings did effect such a complete change in the nature of the original tenure as to create three new tenancies in the place of the old one—(*Sarut Sundari v. Annund Mohan* 1 L. R., 5 Cal., 273.) One co-sharer is not competent to issue a proper notice of enhancement without the consent of other co-sharers previously obtained, though the rent has been paid to each co-sharer separately. Under the F. B. ruling, he must first establish his right to a separate contract to recover his rent separately on his individual share—(*Kashoe Kishore Roy v. Alip Mundle*, 1 L. R. 6 Cal., 149.)

Subject to any contract between the parties.—Where in a suit for enhanced rent after notice, it appeared that a *howladaree amilnama* had been granted at defendant's request, without any rent for the first year, at varying rates less than a certain rate up to 1264, and at that certain rate afterwards it was held that the rent was not liable to enhancement beyond that certain rate—(*Shoora Sundari v. Golam Ali*, 19 W. R., P. C., 141; 2 P. C. R., 794. See also 1 L. R., 3 Bom., 154).

In a lease of a jungleboori *howla* tenure which provided that the lands overed by it should be held rent-free for five years, and that after a low rate had been paid for one year, the *ghora dustoor* should be paid, their intention was construed to be that, inasmuch as the raiyat was bringing those lands into cultivation for the first time, he should for a certain period either pay no rent or something less than customary rates, but the landlord did by this bind himself never to enhance the rate under certain circumstances—(*Bharut Chunder v. Gour Mani*, 11 W. R., 81. compare *Kaseemuddi v. Nuddi Ali*, 11 W. R., 164).

Up to the limit of customary rate.—This sub-section gives discretion to the Court. The maximum is only provided, and it does not follow that the Court shall in every case force up the rent of a tenure to the customary rate. Something less than the customary rate may possibly be given. This view, however, is rendered doubtful by sub-section 2, which provides that the Court can determine a fair and equitable rate only where no customary rate exists. The question then arises where a customary rate does exist, cannot the Court

award a rate which it thinks fair and equitable? Or following the great Rent Case, should it be supposed that, where a customary rate exists, that is the fair and equitable rate. (See the Great Rent Case, B. L. R. Supp. Vol. 202.)

Customary rate is the relic of the old pergunnah rate. We find the first mention of it in section 60, clause 2 of Regulation VIII of

Customary rate.

1793, where the *khudkasht* raiyat's potta is liable to be cancelled on proof that the rents paid by them within the last three years have been reduced below the rate of the *nirkbundi* of the pergunnah. So an auction purchaser under section 5, Regulation XLIV of 1793, quoted under section 6 of this Act, is at liberty to collect from dependent talukdars, and from raiyats or cultivators of the lands lot in farm, &c., whatever the former proprietor would have been entitled to demand "according to the established usages and rates of the pergunnah or district in which such lands may be situated." Mr. Colebrooke in a Minute (1st May 1812) remarked: "In cases where pottas are set aside or cancelled under the rules above quoted, as well as in other similar instances, it is provided that the rent or revenue to be demanded shall be determined by the rates and usages of the pergunnah or district, and the raiyat is entitled to require a renewal of his potta upon those terms. This would be very unexceptionable if, as is here supposed by the Regulations, the proportion of the annual produce in money or kind, constituting the revenue demandable as the due of Government, could be with certainty determined, and if the rents which the landlord may properly ask, according to the established rates and usages of the pergunnah, were accurately ascertainable. For the interests of the cultivator and tenant would be sufficiently protected and secured if the established rules and rates of the pergunnah, according to which he is pronounced entitled to demand the renewal of the lease, and according to which the Courts of Justice are required to decide disputes arising between landlord and tenant, were either known or ascertainable. But there is reason to presume that the pergunnah rates are become very uncertain. In several cases of magnitude which were perseveringly contested by the parties, it appeared from proceedings which came before the Sadar Dewani Adalat while I sat in that Court, that in a district or province in which dependant talukdars are particularly numerous, no rule of adjustment could be discovered after the most patient enquiry conducted by a very intelligent public officer. From the proceedings held in numerous other cases in the Courts of Justice, the same conclusion may be drawn respecting the relative situation of the raiyat and zemindar in most districts. In some, indeed, a rule of adjustment may still be found in full force and actual operation. The Regulations of Benares have maintained the table of rates of 1187 Fasli, and the Kanungo office yet exists in that province for its preservation. In the vicinity of Calcutta the raiyats have been, I understand, supported by the decisions of Adalats (Courts) in their pretensions to hold their lands upon the rents payable by them, or by the persons whose representatives they are according to the last general measurement which was undertaken with the authority of Government before the Permanent Settlement, and of which the record is understood to be preserved in the office of the Collector of the 24-Pergunnahs. Other instances may exist, but they are few, and the position, as a general one, is unquestionably true that there is actually no sufficient evidence of the rates and usages of pergunnahs which can be now appealed to for the decision of questions between landholders and raiyats." He therefore proposed "that provision shall be made by Regulation for cases where the pergunnah rates are not ascertainable, which should regulate the pottas of *khudkasht* raiyats, or of other persons entitled to a renewal of their leases. This will silently substitute a new and definite rule in place of ancient

but uncertain usages. The following are the rules which I should propose with these views:—(1) In any instance where a *khudkasht raiyat*, or other occupant or tenant may be entitled, under the existing Regulations to receive a renewed potta, in consequence of the cancelling of former *pottas* by reason of a public sale for the recovery of the arrears of revenue, or in consequence of any other circumstance rendering requisite the renewal of *pottas* according to the rates of the *pergunnah*, as well as in every case in which the landholder, farmer, or other person in charge of the collections authorized to collect according to the rates of the *pergunnah* in place of subsisting engagement; if in any such case or instance, it shall not appear that established rates are known in the *pergunnah* or other local division, within which the land is situated, or if those rates shall not be ascertainable owing to long disuse or insufficient evidence of them; then, and in every such instance, the renewed potta shall be granted and the collection made in the case of an individual raiyat or tenant, at such rate or rates as are paid or payable for other land of similar description, and as near as may be of the same quality in the vicinity; but in the case of cancelling generally the *pottas* of the *raiya*t and tenants of the whole estate, or of an entire *mouzah*, or other local division of the country, the new *pottas* shall be granted, and collections made at rates not exceeding the highest rate paid for the same lands in any one year within the period of three years last past, antecedently to the date of cancelling the *pottas*. (2) In the case of a dependant talukdar, if the rent of the land be computed according to the rates payable by raiyats or cultivators for land of similar quality and description, a deduction shall be allowed from the gross rent, in the adjustment of the jumma of such dependant taluk at the rate of ten per cent. of the talukdar's profit or income, over and above a reasonable allowance for charges of collection, according to the extent of the taluk." These recommendations were adopted and incorporated in Regulation V of 1812. The preamble of this enactment recited that it had been deemed advisable to revise the rules established regarding the grant of *pottas* by proprietors of land paying revenue to Government, to their tenants, and also the rates at which persons purchasing land at the public sales were entitled to collect their rents, and that there were grounds to believe that considerable abuses and oppression had been committed by zemindars, talukdars, and farmers of land in the exercise of powers vested in them with respect to the distress and sale of the property of their tenants for the recovery of arrears of revenue. The Regulation then declared proprietors of land competent to grant leases for any period which they might deem most convenient to themselves and tenants, and most conducive to the improvement of their estates. They were also declared competent to grant leases to their dependant talukdars, under-farmers and raiyats, and to receive corresponding engagements for the payment of rent according to such form as the contracting parties might deem most convenient and most conducive to their respective interests, provided, however, that this should not be construed to sanction or legalise the imposition of arbitrary or indefinite cesses. All such stipulations were to be null and void, but the Courts were, notwithstanding, to maintain and give effect to the definite clauses of the engagements contracted between the parties, or in other words, to enforce payment of sums specifically agreed between them. Persons attaching land on the part of Government, and purchasers at the public sales, were forbidden to annul existing leases within the year, on the ground that they were collusive, without obtaining a decision to this effect in a Court of Justice. The Regulation then referred to the provisions of the pre-existing law, under which purchasers at revenue sales were entitled to collect, during the year in which the sale took place, whatever the former proprietor would have been entitled to receive "according to the established usages

and rates of the pergunnah or district in which such lands may be situated," and recited that there was reason to believe that, the pergunnah rates had in many cases become uncertain. It accordingly provided that, when any known established pergunnah rates existed, they should determine the amount of rent to be received by purchasers at public sales, and persons attaching lands on the part of Government, where no such established pergunnah rates were known, pottas were to be granted, and the collections made according to the rate payable for land of a similar description in the places adjacent. If the leases and pottas of tenants of an estate generally which consisted of an entire village or other local division, were liable to be cancelled, new pottas were to be granted, and collections made at rates not exceeding the highest rate paid for the same land in any one year within the period of three years next preceding the period at which the leases were cancelled. In the case of dependant talukdars, if the rent were computed according to the rates payable by raiyats or cultivators, a deduction was to be allowed from the gross rent at the rate of ten per cent. for talukdar's profit, over and above a reasonable allowance for collection charges.

The right of an auction-purchaser under Regulation XLIV of 1793, s. 5, is limited to raising the rent of a taluk created by the defaulter to what is demandable from it according to the pergunnah rates prevailing, either at the time when the taluk is created, or at the time when the auction-purchase takes place; and he cannot demand any higher rent even if, at any subsequent time, such higher rent be in accordance with the prevailing current rate—(*Mohini Mohan v. Icha Moye*, I. L. R., 4 Cal., 612.) In every part of India the Government or its alienee is debarred, if not by law (as in Bengal) yet by custom of the country, from enhancing the assessment of permanent tenants beyond a certain limit. What that limit is must be determined by the circumstances of each case. In a suit by an *encumbrar*, holding under a grant from Scindia made in 1793, against his permanent tenant for an enhanced rent, the Court, in the absence of law or contract to the contrary, affirmed the plaintiff's right to enhance the assessment to the extent to which, according to the old custom of the country, Scindia would have been entitled to enhance it, and upon a virtual admission of the defendant, allowed enhancement to the extent of one-half the produce—(*I. L. R.*, 3 Bom., 348.)

Payable by persons holding similar tenures:—Under clause (7) of section 3 of the Act, the word "tenure" includes an under-tenure. Can then the rent of a tenure-holder be forced up to that of an under-tenure-holder? The word 'similar' has saved that risk. 'Similar' should therefore mean not only similar in quality, but similar in degree or class. It would include similarity of land, because tenures not having similar lands can hardly be described as similar to each other. The word is used in its widest sense. The rates payable by talukdars and those payable by cultivating raiyats are different, and the former cannot be enhanced so as to be equal to the latter. The talukdar is entitled to some reasonable profit—(*Haro Sundari v. Anand Mohan*, 7 W. R., 459; *Mohim Chunder v. Gurudas*, 7 W. R., 285; *Muneeakurnika v. Anund Moyee*, 10 W. R. 245; *Dyaram v. Bhoindur*, 1 Sel. Rep., 139; *Gopee Mohan v. Radha Mohan*, 2 Sel. Rep., 17; *Jadub Chunder v. Johori Lushkur*, W. R., (1864), Act X, 74; *Mohim Chunder v. Goroos Dass*, 7 W. R., 285; *Shooru Sundari v. Gopal Lal*, 19 W. R., 143; *Babu Dhanapat v. Goomun*, 11 Moo. I. A., 433 at p. 468; 9 W. R., P. C., 3; *Khajeh Asanullah v. Obhoy Chunder*, 13 Moo. I. A., 317 at p. 324.) Similarly it has been held that a hawladar cannot enhance his *nim-hawladar* to the same extent as his own rent has been enhanced, but only up to the ordinary rate for similar land—(*Mirtenjai v. Manik Chunder*, 7 Sel. Rep., 128.)

7. (2) Where no such customary rate exists, it may subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

See notes under section 7 (1), 'similar tenures.' An *enamdar's* power to enhance the rent of a meerasie tenant is limited. •He cannot demand more rent than what is fair and equitable according to the custom of the country—(I. L. R., 3 Bom., 141.) In a suit for enhancement of the rent paid by *shikmi* talukdars, the plaintiff is bound to afford data (e. g., the rate paid by intermediate tenants of the same class) upon which the Court can come to a satisfactory conclusion as to what would be a fair and equitable rate to be paid by defendant; plaintiff being competent under section 10, Act VI of 1862, to measure the taluk and ascertain the assets—(Debi Dass v. Gobind Mohan, 10 W. R., 213). When the under-tenants paid 1 rupee 4 annas to the howladar, he paid 14 annas to the landlord: when they paid him 1 rupee 8 annas, it was only fair that he should pay 1 rupee to the landlord—(Bharat Chunder v. Gour Mani, 11 W. R., 31). As to what is to be considered fair and equitable rate, this sub-section should be read subject to sub-sections 3 and 4.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

- (a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and
 - (b) the improvements, if any, made by the tenure-holder or his predecessors in interest.
- (4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

Profit not less than ten per centum.—The Rent Commissioners observe:—there are in the existing law no express provisions for the enhancement of rents of tenures, and that the want of a definite enactment on the point has given rise to much expensive litigation. The sections of the Bill relating to this matter are based on those drafted by the Commissioners, and the grounds on which they rest will be best seen from the following extract from the Commissioner's report:—

"We have," they say, "provided for the enhancement of the rent of tenures and under-tenures, by enacting that, in any case in which the rent is liable to enhancement,—there are cases in which it is not so liable,—it may be enhanced up to the limit of the customary rate payable by persons holding similar tenures or under-tenures in the vicinity, or, where no such customary rate exists, up to such limit as to the Court shall appear fair and equitable, but so that the profit of the tenure-holder or under-tenure-holder shall not (in the absence of certain special circumstances, to be noticed hereafter) exceed thirty per centum of the balance which remains after deducting, from the gross rents payable to him, the expenses of collecting such rents. It may be observed that, according to the rule contained in section 8 of Regulation V of 1812, ten per cent. of the balance just mentioned was allowed to the tenure-holder. This section was repealed by Act X of 1859, but, by some oversight, no provision was substituted by this Act though the principle, as being fair and equitable in itself, and usual by reason of the provisions of the regulation, was on several occasions, acted upon by the Courts after that Act was passed. It appears to a majority of us, after careful consideration, that the limit of ten per cent. is too low, and we have accordingly allowed a higher limit, namely, that of a maximum not exceeding thirty per cent. in ordinary cases. We have provided for the special and well-known case of *jungleboori* holdings by enacting that, when more than one hundred bighas of land have been demised for reclamation purposes, more than half being at the time unreclaimed, and the whole having been subsequently reclaimed, the rent of the tenant may not be enhanced so as to leave him a profit of less than twenty per cent. of the net balance above-mentioned, and the Court may allow him such profit in excess of twenty per cent. as to it appears fair and equitable. In order to prevent these new provisions from working hardship by any sudden and great change, we have annexed the following check: (a) the enhanced rent shall not in any case be more than double the previous rent; (b) the Court may direct that the enhancement shall take effect gradually, or, in other words, that the rent shall increase yearly during any number of years not exceeding five, until the limit of the enhancement allowed has been reached; and (c) that rent once enhanced shall not be altered for ten years unless on account of alluvion or diluvion."

"The only further points calling for notice in connection with these sections

BILL NO. I.

are, that it has been provided that the tenure-holder's profits shall never be less than ten per cent. of the net balance, that the provision regarding *jungleboori* tenures has been made applicable to all such tenures irrespective of the area comprised in them, and that a clause has been added providing that, when a tenure-holder has made improvements other than those referred to by the Commissioners, the Court may allow him such amount, by way of profit, as it thinks fit, provided it be not less than ten per cent." (Select Committee on the B. T. Bill No. I).

BILL NO. II.

"We have made a considerable alteration in section 7, sub-section (3), which lays down the rules to be followed by the Court in enhancing the rent of a tenure in cases where the matter is not provided for by contract or custom. It is now simply enacted that the Court shall not leave the tenure-holder less than ten per cent. of the profits, and in fixing the rent shall have regard to the circumstances under which the tenure was created, to the improvements made by the holder of it, and to the costs and risks of collection." (Select Committee on B. T. Bill No. II).

BILL NO. III.

"We have in section 7 of this chapter included among the matters to which a Court must have regard in enhancing the rent of a tenure-holder the questions—whether the tenure was ori-

ginally granted at a specially low rent for the purpose of reclamation, and whether any fine or premium was paid on the creation of the tenure." (Select Committee on the B. T. Bill No. III).

The margin of profit according to the decisions should be from one-third to one-sixth of the gross rent—(Jadub Chunder *v.* Ishan

The old law.

Luskar, Sp. W. R., Act X, 74; 2. R. J. P. J., 313.)

An intermediate holder's rent should not be enhanced, so as to ender his holding altogether void of all reasonable profit. To charge him with full rents of cultivating and resident raiyats would not be fair and equitable—(Gouree Persad *v.* Rani Surnamayi, 6 W. R., (Act X) 41; Uma Churn *v.* Umatarra, 8 W. R., 181; Munseekarnika *v.* Anand Moyi, 10 W. R., 245.) The profit of the talukdar should be 15 per cent. according to Rani Surnomayi *v.* Gouri Prosad, 3 B. L. R. A. C. 270; and ten per cent. and charges according to Panchanand *v.* Hur Gopal, 1 Sel. R., 145.

Gross rents payable to him.—See the definition of the word 'rent' in section 3 (5), and its definition according to the economical schools (Introduction, *ante*). Read with the word 'profit' which precedes, "gross rents" would seem, according to the context, to mean 'profits' and not the limited meaning attached to it by the definition under the Act. Yet the words that follow the expression, *viz.*, 'payable to him,' obviously mean rent as defined in the Act. On the other hand if gross rents had meant gross profits, clauses (a) and (b) and subsection (4) would have been redundant. Indeed the reference to collection charges, and to equitable rent to be assessed and included in the 'gross rents' by subsection (4) clearly indicates that 'rents' mean what they are under the definition of the Act. It is not correct to say that the rent of a fishery or manufactory is not 'rent' within its definition under the Act. See section 3 (5) and notes, and section 183.

8. The Court may, if it thinks that an immediate increase

Power to order gradual enhancement.

of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Compare with section 86.

9. When the rent of a tenure-holder has been enhanced

Rent once enhanced may not be altered for fifteen years.

by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

Compare with section 37.

Where the enhancement is gradual under section 9, it is doubtful if the fifteen years should be calculated from the first year of such gradual enhancement. This section is for the benefit of the tenant, and the limit of time runs from the date on which rent has been enhanced, and the tenant can in the case of gradual enhancement always say that his rent has been enhanced in the 5th year. Besides the enhancement under section 9 is not complete before the 5th

year. On the other hand it can no doubt be contended that the gradual increase under section 8 was for the benefit of the tenant, and that he should not reap double advantages. Possibly where a question of this kind arises, the Court would read sections 8 and 9 together, and would allow a 2nd gradual enhancement reckoning 15 years from the 1st year of the 1st gradual enhancement.

Other incidents of tenures.

It is curious that notwithstanding this heading, sections 10 to 17 give only incidents of permanent tenures and not of all tenures. The Chapter purports to give incidents of tenure-holders, whether permanent or not, and sections 6 to 9 give conditions of all sorts of tenures.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected :

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

This section should be read with sections 65, 89, 155, and 178 (1) (c) of the Act.

Ejection of a permanent tenure-holder.—Observe the definition of ‘permanent tenure’ (section 3 (8)). Ordinarily ejection of the holder of such a tenure is inconsistent with the definition; hence the only possible case is a breach of the condition of the tenure. But the condition must be consistent with the provisions of this Act, where the contract is made after its commencement. If the forfeiture be a penalty for nonpayment of rent, it would not operate as a breach of condition (section 65). Then again in no case will the tenure-holder be ejected from his tenure except in execution of a decree (sections 89, 178 (1) c), *i. e.*, except by a suit, and a suit for ejection is not possible except under the conditions stated by section 155.

Breach of Condition.—This was also the previous law. The liability to ejection of the holder of a *mokurari istemrari* ijara is to be determined by the conditions of his lease, and not by the provisions of section 21, Act X of 1859—(*Mohunt Buloram v. Jogen drouath*, 19 W. R., 349.) The Court (Mitter, J.) observed: “The defendant is the holder of a *mokurari istemrari* ijara and not a raiyat. It is therefore clear that his liability to be ejected from his tenure is to be determined by the conditions of his lease, and not by the provisions above referred to. Now the right of re-entry reserved by the potta, by which the defendant’s tenure was created, cap, under the express terms of that document, be exercised only when there is an arrear of rent due at the end of the year, the words being used *Sal tamamee Akhires*. It appears, however, that the present suit for ejection was brought in the month of Asar, that is to say more than two months previous to the expiration of the Velaity year, and the arrears claimed are admitted to be arrears due for three previous months, *viz.*, Jyte, Bysek and Chyte. Under such circumstances, it is clear that the arrears cannot

be treated as arrears remaining due at the end of the year, and that the plaintiff's claim for ejectment, so far as it is based upon the non-payment thereof, must necessarily fall to the ground." The same principle was held applicable to talukdars. Act VIII (B. C.) of 1869 does not apply to the case of a talukdar who has power to transfer his land, and is liable, under the terms of his kabuliyat, to immediate ejectment in the event of default. The question whether a talukdar is liable to ejectment must be determined by the provisions of his lease—(*Mumtaz Bibi v. Grish Chunder*, 2 W. R., 376.) But see the rulings quoted under the heading "Consistent with the provisions of the Act." In the case of a service tenure a distinct refusal to perform services will cause its forfeiture—(*Hurpradasa v. Ramruttun*, 1 L. R., 4 Cal., 67). But every breach of the conditions of a lease will not subject the tenure-holder to ejectment, the condition must be such as its breach will work by contract as a forfeiture—(*Alum Shah v. Moran*, W. R. Sp. Act X, 31; *Guru Prasad v. Phillippe*, 2 Hay, 451; *Mohomed Faez Khan v. Shib Doolari*, 16 W. R., 103).

Consistent with the provisions of this Act.—The condition must be consistent with the provisions of this Act. Hence if non-payment of rent be a condition of forfeiture, and the condition is made after the commencement of this Act, it will not operate (section 65). But if this condition had been contracted before the Act came into force, will it operate? The answer to this will be found by reading section 178 (1) c with section 65. Under section 178 (1) c, no contract made between a landlord and a tenant before or after the passing of this Act shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, and under section 65, where a tenant is a permanent tenure-holder, he shall not be liable to ejectment for arrears of rent. It follows that a condition stipulating forfeiture of a permanent tenure for non-payment of rent will never operate, whether the contract is made before or after the passing of this Act. Under the old law where such conditions existed, the Courts allowed time for remedying the breach.

In a suit for the cancelment of a lease on account of a breach of its conditions, the breach complained of consisting in the non-payment of rent for a particular period specified in the lease, the lessee is entitled to avail himself of the provision in section 78, Act X of 1859, that section applying to all suits for the ejectment of a raiyat or for cancelment of a lease for non-payment of rent—(*Jan Ali v. Nityanund*, 10 W. R., F. B., 12.) So as to section 52, Act VIII of 1868 (B. C.) which corresponds to section 78, Act X; *Shaik Abdooor Rahaman v. Digumbari Dasi*, 18 W. R., 477.) But applicable only to raiyats and not to talukdars—(*Mumtaz Bibi v. Grish Chunder*, 22 W. R., 376.) Where in a perpetual lease there was a condition that, on default being made in payment of a certain number of instalments of rent, the lease should be void, it was held that in a suit under clause 5, section 23 of Act X of 1859, for cancellation of the lease on account of a breach of the condition, the lessee was entitled to the benefit of section 78, even though the defence set up was false in fact—(*Duli Chand v. Meher Chand*, 12 B. L. R., P. C., 439.) A seputni was granted to B by A who held a durputni containing the following conditions, *viz.*, "I shall pay rent month by month; should I fail in that I shall pay interest on instalments overdue at 1 per cent. per month. I shall pay the rent in full by the close of every year. Should I neglect to make the payments, you will, of your own authority, take over possession of the said durputni taluk after the expiration of one month of the next succeeding year, and I shall have no complaint against your doing so." Upon non-payment of rent for the year 1281, a suit for khas possession of the lands was brought against A and B. The defendants

claimed an equitable right to prevent forfeiture by paying all arrears according to the terms of the *durputni*, together with all costs. The Court (Pontifex and McDonell, JJ.) observed: "We do not think it necessary to decide in this case whether or not the provisions of the Rent Laws actually apply; because we think that, even if they do not in terms apply, we are bound by analogy to that law to apply in favour of the defendants,—an equity similar to the equity there given. We therefore think that if the defendants pay the whole of the rent due up to the present time, with interest according to the stipulations of the original *kabuliyat* and *potta*, and also pay all the costs of the proceedings in both this Court and of the Courts below, the plaintiff ought not to have *khas* possession decreed to him—(*Mothoorah Mohan v. Ramlal*, 4 C. L. R., 469.) Where in a *mokurari* lease, there was a condition that, in case of non-payment of one year's rent, and its falling into arrears, the *mokurari* settlement was to be cancelled, and default was made and a suit for ejectment was brought, it was held that independently of the Rent Act, the defendant should be allowed in equity a reasonable time to pay the landlord's dues in order to prevent forfeiture. It was also held that the provisions of section 52 of Bengal Act, VIII of 1869 are exactly similar to those of section 78 of Act X of 1859, and applicable to the case of a *mokurari* lease; and therefore that a decree passed in conformity therewith, which allowed fifteen days for the payment of the arrears of rent found due and interest thereon was a good decree. Under the present law a permanent tenureholder is liable to ejectment for arrears of rent (sections 65 and 66). The decision of *Mumtaz Bibi v. Grish Chunder*, 22 W. R., 376, was dissented from under the authority of *Duli Chand v. Meher Chand*, 12 B. L. R., 439.—(*Mahomed Ameer v. Peryag Sing*, I. L. R., 7 Cal., 566).

In all such cases now section 155 should be applied on principles of equity.

Building tenures.—See section 184 and notes.

Ejectment of a tenure-holder not permanent.—Sections 89, 155 and 178 (1) c will govern his case. Breach of condition of tenure will under the ordinary law of contract subject him to ejectment, if forfeiture has been stipulated as its penalty.

Limitation.—Limitation does not begin to run in favour of a *mokuraridar* against the *zamindar*, until the latter has had notice that the former claims under a *mokurari* grant—2 P. C. R., 806; 19 W. R., 252, cited above. Under article 1 of Part I of Schedule of this Act, a suit to eject any tenure-holder on account of a breach of condition resulting a forfeiture must be brought within one year of the date of the breach; and notice under section 155 must be served long before.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.

Transfer and transmission of permanent tenure.

Subject to the provisions of this Act.—See sections 12 to 17, 88 and 181 which limit this provision.

Incidents of a permanent tenure.—Heritability of a permanent tenure goes with its definitions;—(see section 3 (8) and notes; *Watson v. Juggeessur*, Musst, 330; *Murel Lukhee Koer v. Bai Hari Krishna*, 3 B. L. R., 226; 12 W. R., 3; *Karunakur v. Niladhro*, 5 B. L. R., 652; 14 W. R., 107.) This section makes it also transferable and passable by

Heritable.

a will. The word 'transfer' has not been defined in this Act. In the Transfer of Property Act (Act IV of 1882), "transfer of property" means an act by which a living person conveys property, in present or in future to one or more other living persons, or to himself and one or more other living persons, and to "transfer property" is to perform such act (section 5).

So under the old law, permanent tenures were transferable.—(*Sadananda v. Nurrothum*, 3 B. L. R., 280; 16 W. R., 290; *Brajanath v. Lukuinarain*, 7 B. L. R., 211; *Panye Chunder v. Hem Chunder*, 1. L. R. 10 Cal., 496.)

For building tenures, see section 182 and notes.

Lands belonging to a zemindari granted by the zemindar under an absolute hereditary *mokurari* tenure do not, on the death of the grantee without heirs, revert to the zemindar; nor does the zemindar, under such circumstances, take by escheat a tenure subordinate to and carved out of his zemindari. The Crown will, on the failure of heirs by the general prerogative, take the property by escheat, subject to any limits or charges affecting it; and there is nothing in the nature of a *mokurari* tenure which should prevent the Crown from so taking it—(*Sanat Koomar v. Hemmut Bahadur*, 1. L. R., 1 Cal., 391, P. C.)

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to patni or other tenures) can be made only by a registered instrument.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or "usufructuary" [Act VII of 1886] mortgage a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely:—

- (a) When rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and
- (b) When rent is not payable in respect of the tenure, a fee of two rupees.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Voluntary transfers.—Instrument "means a non-testamentary instrument." (Section 3, Act IV of 1882).

Hence no verbal gift or sale of usufructuary mortgage of a permanent tenure would be valid. But section 9 of the Transfer of Property Act provides that "a transfer of property may be made without writing in every case in which a writing is not expressly required by law." So "in the case of tangible immovable property of a value less than one hundred rupees, such transfer (*i. e.*, sale) may be made either by a registered instrument or by delivery of the property and delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs in possession of the property" (section 54, Transfer of Property Act). A tenure which is not a permanent tenure within the meaning of the Act may, however, be transferred orally or by unregistered document, unless barred by the Registration Act. The transfer of his tenure by a putnidar is not binding on the zemindar, unless made strictly in accordance with the provisions of Regulation VIII of 1819—(*Watson v. Collector of Rajshahye*, 13 Moo. I. A., 160; 3 B. L. R., P. C., 48; 12 W. R., P. C., 43.)

The registering officer's duty.—"We have in sections 12 to 16 of the Bill so far altered the system of the registration of transfers of, and successions to permanent tenures as to provide merely for enabling the landlord to register such transfers instead of compelling him to do so. The Bill in its previous stages provided for a compulsory system of registration by the landlord. This, it was objected, would not work satisfactorily, especially as the landlords of many tenure-holders are poor and ignorant persons, having no regular office and no means of establishing one or maintaining a suitable register. At the same time it was pointed out that the establishment of an official registry could confer a great benefit on all concerned, and especially on the landlords, who might, if such a registry were established, be allowed to realize their rents by the process of summary sale which is now available only in the case of a limited class of tenures. A Bill for the establishment of an official registry is at this moment before the Bengal Legislative Council, and the object we have set before ourselves in recasting the portion of our Bill now under consideration has been to frame its provisions in such a manner as to secure to the Collector, who will be the officer entrusted with the preparation and maintenance of the official register, early and accurate information of all transfers and successions which may from time to time take place. We have not overlooked the fact that the substitution of official registration for registration in the landlord's sherista would deprive the landlords of the fees which it was proposed to allow them under the Bill as originally framed, and which, it is believed, they commonly realize at present, though in most cases without any warrant of law. We think that the fees prescribed by the Bill in its earlier stages may well be paid to the landlord, even though he is to be relieved of the duty of registration. The provisions we have inserted in the Bill in order to give effect to these views are as follows:—First, as regards voluntary transfers (section 12), the simplest plan has appeared to us to be, to require that every such transfer shall be registered under the ordinary law relating to the registration of documents. It is understood that the Local Government will make all arrangements requisite for facilitating the registration of such transfers. The parties applying for registration will be required to pay to the registering officer "the landlord's fee" and a process-fee for the service of notice on the landlord. When the registration has been completed, the registering officer will forward to the Collector the landlord's fee and a notice of the transfer containing all necessary particulars, and the Collector will thereupon cause the landlord's fee to be paid to the landlord and the notice to be served upon him, at the same time taking any such steps as may be prescribed by the measure now pending before the Bengal Legislative Council for the entry of the transfer in his official register." (S. C. R.)

Notices under the prescribed forms.—The Local Government has by notification prescribed the following forms of notices, mode of their service, and fees for serving them :—

"Sections 12, 13 and 15.—Notices under these sections shall contain, so far as may be possible, the particulars given in the forms specified in Schedule I, and shall be served on the landlord or his agent, or, where two or more persons are joint landlords, on their common agent referred to in section 188, or on their common manager appointed under section 95, as the case may be, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure. Where there is more than one landlord, and no common agent or common manager has been appointed, the notice shall be served by being posted on the landlord's village office, if any; and if there be no village office, by fixing it up in the presence of not less than two persons on some conspicuous place on the tenure, and a copy shall also be forwarded by post in a letter registered under Part III of the Indian Post Office Act to the person, or persons, to whom immediately preceding the transfer the rent had ordinarily been paid. When notice is served personally, the landlord's fee shall be tendered with the notice. If in cases of personal service a receipt cannot be obtained for the fee from the landlord or his agent, and in all cases when the notice is not served personally, the fee shall be held in deposit by the Collector until applied for by the person or persons authorized to receive it." (Local Government Rules, Chapter V, Rule 1, Calcutta Gazette of the 23rd December 1885).

SCHEDULE I.

NOTICE UNDER SECTION 12, ACT VIII OF 1885.

To

THE COLLECTOR OF

LET this notice be served on A.B., resident of _____, as required by section 12, Act VIII of 1885. The landlord's fee of Rs. _____ with process fee of Rs. _____ is forwarded herewith.

C.D.,

Registering Officer.

To

A.B., RESIDENT OF

TAKE notice that the transfer of the tenure specified below, of which you

* Or riyati holdin : at are alleged to be the landlord, has been registered, and fixed rates. that the landlord's fee of Rs. _____ is tendered to you here

1	2	3	4	5	6	7	8	9	10
Towaji number of estate.	Name of estate.	Description of tenure transferred with village and pottanah in which situated.	Annual rent of tenure.	Name, father's name, and residence of transferor of tenure.	Name, father's name, and residence of transferee of tenure.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	REMARKS
								R. A. P.	

C.D.,

Registering Officer.

Ordered that this notice be served on the above named landlord.

E.F.,

Collector.

Received a copy of the above-mentioned notice and rupees (Rs.), being the amount of landlord's fee specified above.

Stamp, if amount exceeds Rs. 20.

Landlord.

The following scale of fees has been prescribed for service of notice under the Act by the Bengal Government.

"1. Section 189 (1).—For service of Notices.—For the service of every notice under this Act, not being a notice issued by any Revenue or Civil Court (fees for serving which are regulated by the Court Fees Act), and not being provided for by any other rule made under this Act, a process fee of 12 annas shall be levied, if the notice be directed to one or more persons residing in the same village.

"2. Where such notices are directed to several persons resident in different villages, a fee of 12 annas shall be levied for service in each village.

"3. In addition to the above fee, the actual charge which must be incurred, if it is necessary to travel by railway or boat, or cross ferries, will be levied from and paid by the person at whose instance the process is issued before issue of the process. If a peon carries more than one process involving charges for railway-fare, boat-hire, &c., the sum leviable will be charged in equal shares upon all the processes so carried. The rates at which such boat-hire is to be charged shall be the same as those fixed for criminal processes under Rule VII of the rules prescribed by the High Court under clause 2, section 20, Act VII of 1870, and shall be sufficient only to cover, on the whole, the actual cost of hiring boats, or of such boat establishment as it may be necessary to maintain for the purpose of serving processes of these classes.

"4. If a peon is detained at the place of service for more than 24 hours at the request of the person at whose instance the process was issued, or of his agent, such person or agent must then and there pay demurrage at the rate of 5 annas a day. Unless this demurrage is paid, the peon must decline to wait. No demurrage is to be charged if the delay was not due to the person requiring the process or to his agent." (Bengal Govt. Rules, Chapter VII.)

Effect of registration.—Sections 12 to 16 now replace section 26 of Act X of 185, and section 27 of Act VIII of 1869 B. C. which provided:

"All dependent talukdars and other persons possessing a permanent transferable interest in land, intermediate between the zemindar and cultivator, are required to register, in the sherista of the zemindar, or superior tenant, to whom the rents of their taluks or tenures are payable. All transfers of such taluks or tenures, or portions of them, by sale, gift or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every zemindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers when made in good faith, and all such successions and divisions: Provided that no zemindar or superior tenant shall be required to admit to registry, or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the zemindar or superior tenant."

The penalty of non-registration under the new law is that the transfer will be inoperative (section 12, sub-section 1), and in the consequence of non-registration, that the successor will not be entitled to recover rent from his sub-tenants (section 16). The old law provided no such penalty. Registration is as much for the benefit of the tenant as of the landlord, and it is perhaps on this account that no express penalty was attached to non-registration. "The only object," observed Markby, J., "of the provision appears to have been that the zemindar might have information as to who was his tenant. It is true that no express penalty for omission to register is provided, but I cannot assume that because the Legislature has not expressly provided a penalty, therefore this severe one of forfeiture was intended"—(*Nobin Kishen v. Shib Persad*, S. W. R., 9.) A zemindar is not bound to look beyond his books for the party liable to him for rent, except when he has recognized other persons as his tenants either by receipt of rent or otherwise—(*Shadhun Chander v. Gooroo Charan*, 15 W. R., 99; *Anund Moye v. Mohendra Narain*, id., 264.) A zemindar who has not recognised the new tenant may, notwithstanding the transfer, sue the former tenant for arrears of rent which accrued during his tenancy, and having obtained a decree, may sell the tenure under section 59, without regard to the right of the new tenants—(*Nobin Kishen v. Shib Persad*, 8 W. R., 96. The unregistered transferee of a transferable tenure cannot be treated by the zemindar as a trespasser, but as against the zemindar who has evicted him has a right to be restored to possession by an action in the Civil Court. There is no provision in this section that an unregistered transfer is void as against the landlord, nor is there any penalty provided for the omission to register. The only object of this section appears to be that the zemindar may have information as to who is his tenant. It is quite sufficient that the zemindar retains his right to sell the tenure for arrears of rent—(*Hurromohun v. Chintaman*, 2 W. R., Act X, 19; *Nobeen Chunder v. Shib Persad*, 8 W. R., 96.) A zemindar is not bound to recognise the sale of a tenure which is not transferable, or to accept the purchaser as a tenant, nor is he bound to allow a sub-division of a tenure—(*Shibdas v. Bamundas*, 15 W. R., 360.) Where a raiyat makes a transfer of a tenure which is not transferable, the landlord is entitled to look to the former tenant and not to the transferee as the party liable for the rent, but is not entitled to khas possession—(*Suddyo Pura v. Boistub Pura*, 15 W. R., 261). A tenant who alienates his tenure does not thereby subject it to forfeiture—(*Dwarkanath v. Kanayo*, 16 W. R., 110). The transfer of a tenure, not transferable by the custom of the country, is incomplete where the zemindar's consent is wanting. As against the zemindar the purchaser can have no rights; he cannot require the zemindar to take rent from him. But on the other hand, the zemindar cannot evict the transferee and take actual possession of the tenure so long as the recorded tenant or his heirs continue to pay the rent—(*Joy Kishen v. Rajkishen*, 5 W. R., 147). *Per contra*, where a tenure is not transferable, and the transfer has not been consented to or adopted by the zemindar, the zemindar is entitled to treat the raiyat as a trespasser and to evict him—(*Huro Mohan v. Chintamonee*, 2 W. R., Act X, 19). If a raiyat not having a transferable tenure makes over his interest and gives over the land to a third person, he may be treated as having abandoned all rights formerly possessed by him in the land; when the purchaser takes possession of a non-transferable tenure and interposes himself between the zemindar and the raiyats on the land, he thereby commits a wrong, and the zemindar may sue to declare that no interest is vested in such purchaser, or to restrain him from interfering with the collection of rent—(*Hureechurn v. Jodunath Ghose*, 7 W. R., 114). The zemindar need not recognize a transfer where the lessee's interest is transferable, if in

so doing he defeats his own right of re-entry—(*Nund Kishore v. Rani Ismed Koer*, 20 W. R., 189). He is not in fact bound to recognize any transfer made without his knowledge and consent, and which is unregistered, and it is sufficient for him to bring his suit against the party from whom he receives rent or whose name is recorded in his *sherista*—(*Huree Churan v. Meherunnissa*, 7 W. R., 318; *Sadhun Churn v. Goroo Churn*, 15 W. R., 99; *Kasheenath v. Luchmoni Persad*, 19 W. R., 99). Any improper transfer, however, does not deprive the old surburakar of his rights or entitle the zemindar to get khas possession—*Id.* But the transferee has no legal status as against the zemindar until the transfer has been registered; and if ejected from his holding, he cannot sue the zemindar for possession, until he has himself been recognized as tenant, or has been registered as such in the zemindar's *sherista*—(*Mukta Keshi v. Peary Chowdrain*, 7 W. R., 158). Although the sale of an under-tenure has not been recognized by the landlord as registered, it must not be assumed that the purchaser has no right as connected with the property, for a *bona fide* purchaser at an execution sale may even, though his name be not registered in the zemindar's *sherista*, sue for a declaration of title and possession—(*Hurish Chunder v. Ananda Chunder*, 9 W. R., 279). The facts of this last case do not seem very clear. Again a transferee of an under-tenure is a person sufficiently interested in the protection of the tenure to stop its sale, even though the transfer has not been registered—(*Khettur Paul v. Lukheernarain*, 15 W. R., 125; *Anand Lal v. Kalika Persad*, 20 W. R., 99; *Shyam Chund v. Brajanath*, 21 W. R., 94; *Nobin Chunder v. Nobin Chunder*, 22 W. R., 46; *Umacharnu v. Kadambini*, I. L. R., 3 Cal. 146; *Panyé Chunder v. Hura Chunder*, I. L. R., 10 Cal. 495).

This section though it lays down a penalty for the tenant for non-registration does not say in so many words that the landlord is bound to recognize the purchaser. But the object of the provision is the same. Registration is for giving the zemindar information about his tenant, and the law lays down how the information will necessarily reach the zemindar. Hence he cannot now wantonly or dishonestly ignore the purchaser, because he will get a notice of the purchase through the Collector. Questions about the service of notice will, however, rise under the new provisions. Where, however, the landlord's fee has been deposited by the transferor or transferee, the presumption will be that the notice has been served.

Under the old laws too when a zemindar refused to register a transfer, the tenant's remedy was by action in the Civil Court, and the Court superceded the necessity of registration; but under no circumstances will a landlord register the subdivision of a holding—(*Watson & Co. v. Ram Soondur*, 3 W. R. (Act X), 165). And the limitation will run from the time of such refusal and not from the time of purchase—(*Radhika Persad v. Gooro Prosonno*, 20 W. R., 125). Of course a holding can be subdivided with the zemindar's consent; and it has been held that a farmer, who is confessedly authorised to receive the surrender of a holding, can likewise sanction the subdivision of a holding, and that this sanction, in the absence of fraud and collusion, will be binding upon the zemindar—(*Huree Mohan v. Gora Chaud*, 2 W. R. (Act X), 25). But before a suit can be brought to compel registration, the transferee must make a formal application to the landlord to register—(*Bhooputee Roy v. Umbika Churan*, 17 W. R., 169).

When however the landlord's fee has not been deposited, or the transfer has not been made by a registered instrument, but the zemindar has recognized the transfer, he cannot retract and sue his old tenant. He is estopped by his own conduct. A zemindar may recognize a transfer by receiving rent from

The equivalent of registration is the recognition of the tenancy by landlord.

the transferee—(*Nobo Koomar v. Kishen Chunder*, Sp. W. R., Act X, 112; *Dwarkanath v. Allendi*, 15 W. R., 320; *Dhunput v. Velleet Ali*, id., 211; *Anundmayi v. Mohendranarain*, id., 264; *Hanoomah v. Musst. Koomerunnessa*, 1 Hay, 266; *Meah Jan v. Kurunamayi*, 8 B. L. R., 1.) A zemindar may by accepting rent assent to a transfer which involves a sub-division of a tenure—(*Bharut Chunder v. Ganganarain*, 14 W. R., 211.) The mere cognizance or supposed cognizance by a zemindar of the fact of a party having purchased a tenure is not sufficient to cure the defect of non-registration. It must be shown that the zemindar has not only known of the transfer, but has accepted the transferee as his tenant—(*Sarkies v. Kali Kumar*, Sp. W. R., Act X, 98.) Where a zemindar takes rent from a party as holder of a tenure, he cannot afterwards draw back and ignore the position of such party, even although the latter may not have been registered in his office—(*Mirtunjoy v. Gopal Chunder*, 10 W. R., 466; 2 B. L. R., A. C., 131.) So again a landlord, by having allowed the sums paid into the Collectorate by a third party to be carried to his credit, was held to have clearly recognized the transfer from the tenant to the third party, although such transfer had not been registered—(*Rangobindo Roy v. Doshobhooja*, 18 W. R., 195.) In the same way where a landlord, in executing a decree for rent, sold his raiyat's tenure, he cannot proceed against the old tenant for arrears of rent; but he must proceed against the execution-purchaser, notwithstanding the non-registration of the purchase in his sherista—(*Prosunnomoyi v. Bhobotarini*, 10 W. R., 494; *Gopeekristo v. Ram Kumar Marsh.*, 212.) But the payment of rent to the gomasta for one or two years, without communicating the fact of purchase to the zemindar, was held not to amount to a recognition of such transfer by the zemindar—(*Bhojohary v. Aka Golam*, 16 W. R., 97.) Again the registry in the zemindar's office is not necessary to a party who has established his rights in a suit against the zemindar through the medium of a Court—(*Koylash Chunder v. Grish Chunder* 2 Hay, 170.)

As to whether, in the case of a *benami* transaction, the landlord is entitled to proceed against the *benamidar*, or against the person beneficially entitled, there seems some conflict of opinion, the majority of the Judges apparently holding that the landlord may proceed against the persons really in possession—(*Bopin Behary v. Ram Chunder*, 5 B. L. R., 235; 14 W. R., 12. The cases on this point, however, were decided under Act X of 1859; and turn more or less on the question of the jurisdiction of the Revenue Courts. It may be said that the law is thus stated by Peacock, C. J., in *Raj Kishore v. Heeralall Bakshee*, Marsh., 188. "In determining this case, it was necessary to try whether Heeralal was the real proprietor, and whether Roopchand was merely his agent. The Judge had power to determine that question, and has found that the lease was *benami* and that Heeralal was the actual farmer, and the person beneficially interested in it. That being so, we are of opinion that Heeralal, as the real proprietor, was liable for arrears of rent. It is a general rule of English law that where an agent enters into a contract in his own name as principal, without disclosing the fact that he is merely acting as agent, the principal, when discovered, is liable to be sued upon the contract. But the principal is not liable upon the contract of his agent, if the other party to the contract, with full knowledge of the facts, and having the power and means of deciding to whom he will give credit, elects to give credit to the agent in his individual character. Similar view was taken in the Full Bench case of *Prosono Kumar v. Koylash Chunder*, 2 Ind. Jurist., 227; 8 W. R., 428. See notes under "*Arrears of rent*," Chap. VII., post.

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, "or when mortgage of a permanent tenure, other than an usufructuary mortgage thereof is foreclosed" [Act VI of 1886], the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, "or making a decree or order absolute for the foreclosure." [Act VIII of 1886], require the purchaser "or mortgagee" [Act VIII of 1886] to pay into Court the landlord's fee prescribed by the last foregoing section and such further fee for service of notice of the sale "or final foreclosure" [Act VIII of 1886], on the landlord as may be prescribed.

(2) When the sale has been confirmed, "or the decree or order absolute for the foreclosure has been made" [Act VIII of 1886], the Court shall send to the Collector the landlord's fee and a notice of the sale "or final foreclosure" [Act VIII of 1886], in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Notice in the prescribed form.—See notes under section 12. The following form of notice has been prescribed by the Local Government :—

NOTICE UNDER SECTION 13, ACT VIII OF 1885.

In the Court of the* *of*

To

THE COLLECTOR OF

LET this notice be served on A. B., resident of , as required
by section 13, Act VIII of 1885. The landlord's fee of Rs. with
process fee of Rs. is forwarded herewith.

C.D.,

Judge.

To

A.B., RESIDENT OF

TAKE notice that the sale of the tenure* specified below, of which you are alleged to be the landlord, has been confirmed, and that
* Or raiyati holding at fixed rates. the landlord's fee of Rs. is tendered to you
herewith.

1	2	3	4	5	6	7	8	9
Towji number of estates.	Name of estate.	Description of tenure transferred, with village and pergunnah in which situated.	Number of execution case and names of parties.	Name, father's name and residence of person whose interest in the tenure, has been sold.	Name, father's name, and residence of purchaser of tenure.	Date of confirmation of sale.	Amount of landlord's fee.	REMARKS.
							Rs. A. P.	

C. D.,
Judge.

Ordered that this notice be served on the abovenamed landlord.

E F.,
Collector.
(Rs.),

Received copy of the above mentioned notice and rupees being the amount of landlord's fee specified above.

Stamp, if amount exceeds Rs. 20.

A.B.

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.

Transfer of permanent tenure by sale in execution of decree for rent.

In this case no landlord's fee is necessary because he causes the sale himself, and the Collector is not required to give the notice upon him, because he is supposed to be already aware of the purchase. Where, however, the sale is caused by a co-sharer for his share of rent, no provision is made for giving notice to other shareholders.

The notice to the Collector was obviously provided in view of the Permanent Tenures Registration Bill.

Notice in the prescribed form.—See section 12 and notes. The following form has been prescribed by the Local Govt. (Local Govt. Rules, Chap. VIII schedule I.)

NOTICE UNDER SECTION 14, ACT VIII OF 1885.

In the Court of the

To

THE COLLECTOR OF

It is hereby notified to you that the tenure,* the particulars of which are entered below, was sold on the date specified below in execution of a decree for arrears of rent due in respect thereof.

* Or raiyati holding at fixed rates.

1	2	3	4	5	6	7	8	9	10
Torji number ² of estate.	Name of estate.	Name of landlord of estate.	Address of landlord.	Description of tenure sold with siting of the pargunnah in which situated.	Number of execution case and names of parties.	Name, father's name, and residence of person whose tenure has been sold.	Name, father's name, and residence of purchaser of tenure.	Date of confirmation of sale.	REMARKS.

C.D.,
Judge.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to permanent tenure. the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

This section is not retrospective; where succession has opened before the Act came into force, this section will not apply; or where succession has been recognized by the zemindar privately by receipt of rent or otherwise, possibly the penalty attached by section 16 will not be enforced.

Notice in the prescribed form.—See section 12 and notes. The following forms of notice have been prescribed by the Local of Govt., (Local Govt. Rules Chap. V. schedule I.).

NOTICE UNDER SECTION 15 OF ACT VIII OF 1885.

To

THE COLLECTOR OF

Be pleased to cause this notice to be served on A.B., resident of

Rs. The landlord's fee of Rs. with process fee of is deposited herewith for payment to the said A.B.

C.D.,
Tenure-holder.

To

A.B., RESIDENT OF

TAKE notice that I have succeeded to the tenure* specified below, of
* Or raiyati holding at which you are the landlord. The landlord's fee of fixed rates. Rs. is tendered to you herewith.

1	2	3	4	5	6	7	8	9	10
Towri number of estate.	Name of estate.	Description of tenure succeeded to, with village or jagannah in which situated.	Annual rent of tenure.	Name, father's name, and residence of late tenure-holder.	Date, if known, of deceased tenure-holder's death.	Name, father's name, and residence of successor to tenure.	Nature of successor's title to succeed.	Amount of landlord's fee.	REMARKS.
								Rs. A. P.	

C.D.,

Resident of

Ordered that this notice be served on the abovenamed A.B.

E.F.,

Collector.

Received copy of the above mentioned notice and rupees
(Rs.), being the landlord's fee specified above.

Stamp, if amount
exceeds Rs. 20.

A.B.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

If, however, the succession has been recognised by the zemindar by receipt of rent or otherwise, this section will be no bar to his recovering rent from the sub-tenants, in spite of his not fulfilling the conditions of section 15.

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

See notes under section 88 *post* and section 12 *ante*.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

- (a) Shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure; and
- (b) Shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

Rate fixed in perpetuity.—By the term “fixed rates of rent,” to quote the decision of Peacock, C.J., in the Great Rent Case, “is meant not merely fixed and definite sums payable as rent, but also rates regulated by certain fixed principles. Such, for instance, as a certain proportion of the gross or the net produce of every bigha, or such a sum of money as would give to the raiyat any fixed rate of profit after payment of all the expenses of cultivation. *Id cestum est quod cestum reddi potest* is a maxim of law—(Thakurane Dasce v. Bishesvar Mookerji, B. L. R., 1 Sup. Vol., 202; 3 W. R., (Act X), 108.) In a subsequent case it was held by E. Jackson, J., (whose views were confirmed by the third Judge Trevor, J., to whom the case went up for opinion) that no rate of *bhaoli* rent, varying yearly in amount with the varying amount of the gross produce of the land, though fixed as to the proportion which it is to bear to such produce, is a fixed unchangeable rent of the nature alluded to in the section. Bayley, J., dissented, holding that “a contract to pay half in kind did not involve a varying rate, being as much a fixed contract as if it were to pay half of Rs. 100 or any other sum—(Mahomed Yakub Hossein v. Sheik Chowdry Wahed Ali, 4 W. R., (Act X), 23; 1 Ind. Jur., 29.) This decision was followed by the Judges in another case—(Thakoor Prosad v. Nowah Syud Mahomed Baker, 8 W. R., 170.) The decision of Trevor and Jackson, JJ., is however disapproved of in *Ram Doyal v. Baboo Luchmi Narain*, 6 B. L. R., App., 25; 14 W. R., 385. Mr. L. S. Jackson, J., dissented from the above rule and observed: “If this ruling is correct, the Legislature must have intended that raiyats who have held land upon one principle, that is to say, upon one fixed rate of division of the produce of their land with the landlord, from the time of the Permanent Settlement, would be entitled to no protection whatever, but would after these eighty or ninety years be subject to a suit for enhancement or for commutation of their rent at such money rates as the landlord might be enabled to prove. I cannot believe that the Legislature could have intended any such injustice to raiyats in those parts of the country where the *bhaoli* system is prevalent, as it is in many parts of Behar. In these parts of the country, there being no such thing as a rate of rent in money, raiyats holding from the time of the Permanent Settlement would have no protection whatever, unless the Legislature meant to include under the words ‘rate of rent’ the mode or principle of *bhaoli* payment.” The weight of authority seems to be in favour of the view adopted by the Chief Justice and Mr. Justice Bayley. Act XI of 1859, section 37, when

speaking of raiyats who cannot be ejected by an auction-purchaser, places in the same category those who have a right of occupancy at a fixed rent and those who hold at rates assessable according to fixed rules. And in another case it was held that an arrangement by which a certain rent in cash is to be paid in lieu of rent in kind, does not show a variation in the rate of rent, but is tantamount to saying that the money rate represents and is equivalent to what was before paid in another way—(*Miturjeet v. Toondan*, 3 B. L. R., App., 88; 12 W. R., 14.) So Mookerji, J., observed: "The rent in money is a rent fixed on a certain proportion of the value of the actual produce of the land. But in cases where the zemindars could not come to any clear understanding as to the money value of the produce, they allow the rent to be paid by a division of the produce itself. In both cases the man who pays the rent is a raiyat. * * * I am not also prepared to hold that a raiyat who has since the Permanent Settlement paid a certain fixed proportion of the produce of the land to the zemindar cannot say that his tenure is a holding in perpetuity at a fixed rent—(*Jutto Moar v. Musst. Basmati Koer*, 15 W. R., 479. So it has been held in the Allahabad High Court that a rent in kind (*bhaoli*) which, though it varies yearly in amount with the varying amount of the yearly produce, is fixed as to the proportion it is to bear to such produce, is a fixed rent within the meaning of Act X of 1859, section 3 (corresponding with Act XVIII of 1873, section 5). A tenant, therefore, in a permanently settled district, holding his land at such a rent, is entitled to claim the presumption of law declared in Act X of 1859, section 4 (corresponding with Act XVIII of 1873, section 6) if he proves that, for a period of twenty years next before the commencement of the suit to enhance his rent, he has paid the same proportion to the produce of his holding—(F.B.) 1 L. R., 1 All., 301.

• See also section 50 of this Act, and sections 3 and 4 of Act VIII of 1869 B.C. The words 'in perpetuity' are very important, because the benefits of this section are not available by a raiyat whose rent has been fixed for a term.

There is no provision for creating a fixed raiyat by contract. But a landlord can certainly by agreement fix the rent of his raiyat, as such a measure is conducive to the interests of the peasantry and not inconsistent with the object of the Act. Where the period of the tenure is not fixed but the rent, the intention of the parties should be gathered as to whether the rent was meant to be fixed in perpetuity, because this provision is based upon the assumption that where a landlord fixes a rent in perpetuity, he means the tenure to be perpetual too.

Transfer and succession.—The heritability of a permanent tenure goes by its definition (section 3 (81)), and that of an occupancy holding by section 26, but a raiyat at a fixed rate will be governed by the provisions with respect to succession to a tenure (section 11). No doubt a nice distinction may be drawn between the 'definition' and the 'provision' of a permanent tenure, but the ultimate result of both is that a permanent tenure is heritable, and therefore under section 18 a raiyat at a fixed rate is also heritable.

See sections 11—17 and notes. The fixed raiyat cannot therefore transfer his holding except by a registered instrument, and shall have to deposit the landlord's fee and give notice to the Collector on occasions of transfer or succession (sections 12 to 17). In this respect he will be in a different position from the occupancy raiyat (see clause (d) of sub-section 3 of section 178, and notes (a) and (c) and (d) of section 12). His tenure is, however, transferable *ipso facto* (section 11).

Ejectment.—See sections 10 and notes; and compare sections 23 and 25.

CHAPTER V.

OCCUPANCY-RAIYATS.

(See the history of 'occupancy raiyats' in the Introduction, *ante*).

General.

19. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

Continuance of existing occupancy-rights.

This section is retrospective in its operation; so that raiyats who had cultivated or held land for twelve years before the passing of this Act became occupancy raiyats as soon as it came into force. Such was also the occupancy raiyat under section 6 of Act X of 1859—(Thakuranee Dasse v. Bisheshur Mukerji, B. L. R., 1 Sup. Vol., 202; 3 W. R., (Act X), 29). It also substantially restores the old law. Act X of 1859, while creating a statutory right of occupancy for every raiyat who had cultivated or held land for twelve years did not expressly destroy or interfere with any similar right created by custom, contract, grant, prescription or otherwise.—See B. L. R., F. B., 326. The object of Act X of 1859 was to re-enact the provisions of existing laws relative to the rights of raiyat and not in any way to destroy those rights. If therefore the plaintiff had *gorabundi* tenure existing before the enactment of Act X, (and it had been found that the plaintiff's *gorabundi* tenure had been recognized in a long series of decisions commencing from the year 1846), the enactment of the Act in no wise deprived him of his rights in that tenure—(Rajah Leelanund Bahadur v. Nirput Mahaton, 17 W. R., 306). See the Preamble and notes.

The right so acquired cannot be taken away by contract—section 178 (1) (b).

In Assam a raiyat can acquire a right of occupancy in lands held from the Government and cultivated by him, under section 6 of Act X of 1859—(Kanuram Goonburah v. Dhata Ram Thakoor, 7 C. L. R., 47; I. L. R., 6 Cal., 196). In this case the Court understood that the law in force in Assam is Act X of 1859. This has, however, been held otherwise in a later case—(Prosedho Narain Koer v. Man Koch, 11 C. L. R., 554).

By the operation of any enactment.—See section 6 of Act VIII of 1869 (B.C.) and Act X of 1859, quoted under the next section.

20. (1) Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

Definition of "settled raiyat."

Section 6 of Act VIII of 1869 ran as follows: "Every raiyat who shall have (has—Act X of 1859 section 6) cultivated or held land for a period of twelve years shall have (has—Act X of 1859, section 6) a right of occupancy in the land so cultivated or held by him, whether it be held under *potta* or not, so long as he pays the rent payable on

The old Acts.

account of the same ; but this rule does not apply to Khamar Neej-Jote or Seer land belonging to the proprietor of the estate or tenure and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to lands sub-let for a term, or year by year, by a raiyat having a right of occupancy. The holding of the father or other person from whom a raiyat inherits, shall be deemed to be the holding of the raiyat within the meaning of this section."

Every person who has held as a raiyat.—This section should be read with section 4, and clauses (2) and (3) of section 5, as well as with Chapters XI and XV of the Act. The old Acts had, "every" raiyat who shall have (or has—Act X of 1859) cultivated or held." Under the old law the term raiyat was not defined. The present Act defines it in clauses (2) and (3) of section 5. Reading therefore this section with the definition of "raiyyat" it would seem that two things are primarily necessary to constitute a settled raiyat. He must (1) be a raiyat and not a trespasser or middleman (tenure-holder) or even an under-raiyat ; (2) he must hold for the purposes of cultivation. This section would therefore apply merely to raiyats who pay rent for the land they hold and cultivate ; and where a person by his own confession does not fall within the category of a raiyat, he cannot claim to be a settled raiyat.

Thus occupation by a trespasser could not confer a right under this Act, and could not be taken into account in considering whether a person had occupied as a raiyat for twelve years"—(Sheik Peer Bux v. Sheik Meeah Jan, W. R. Sp., F. B., 146 ; Gholam Hyder v. Poorno Chunder, 3 W. R., Act X, 147 ; Ghareeb Mundle v. Bhoobun Mohun, 2 W. R., Act X, 85). In *Sreematy Uma Sundari v. Kishori Mohun*, 8 W. R., 238, the zemindar obtained a decree against a raiyat for assessment on the ground that the raiyat held under an invalid lakheraj but instead of assessing turned the raiyat out of possession ; it was held that suit by the raiyat for recovery of land on the ground of anterior possession is not sustainable, and the raiyat must prove his title as against the zemindar, his anterior possession under the invalid lakheraj, the decision as to which he did not sue to set aside within proper time, being the possession of a mere trespasser and not that of an occupancy raiyat. A party who has been in the occupancy of land without paying any rent is not entitled to the protection of Act VIII (B.C.) of 1869, section 6 and section 22, even on the ground of a right to hold the land rent-free—(Kalee Krishna v. Shashani Dassi, 24 W. R., 52.) In *Ishan Chunder v. Hurish Chunder*, 18 W., 19, 10 B. L. R., App. 5, plaintiff having in a former suit obtained a declaration that certain land was his mal land and not defendant's lakheraj, brought a suit for khas possession ; it was held that the defendant's holding either as a korfadar (sub-lessee) or as a trespasser gave him no right of occupancy under section 6, Act X of 1859, and that his erection of a mud-house on the land and dwelling there for more than twelve years afforded no presumption of acquiescence on the part of the plaintiff. Mere possession, however, of a permissive character and without any right cannot confer a right of occupancy—(Meherali Khan v. Ramrutun, 21 W. R., 400 ; Addoyta Churn v. Peter Dass, 17 W. R., 383 ; Kabeel Shaha v. Radha Kishen 16 W. R. 146). A raiyat who secretly possesses himself of land and pays no rent for it has no right of occupancy in that land—(Ghoreeb Mundle v. Booban Mohan 2 W. R., Act X, 86 ; Gholam Hyder v. Poorno Chunder, 3 W. R., Act X, 147). Possession obtained and continued by fraud is not possession within the meaning of this section—(Bhoobunjoy Acharjee v. Ram Narain, 9 W. R., 449) ; and mere possession in the capacity of a servant does not create the right—(Wooma Moye v. Bokoo Behara, 13 W. R., 333). In *Hurro Gobindo v. Ramrutun*, I. L. R., 4 Cal., 67, Garth, C.J., observed ; "We are very much

disposed to think that if the defendants held by a service tenure they could not acquire a right of occupancy; however it is not necessary to decide that point on this occasion." In the same way a person occupying

Middlemen or tenure-holder.

merely as the assignee of the zemindar and cultivating because of the opportunity thus afforded, cannot claim the benefit of this section—(*Wooma Nath v. Kundun Towari*, 19 W. R., 177). A possession which amounts simply to a mostagiri right to collect rents from raiyats is not such a possession as confers a right of occupancy—(*Lala Ishur v. Bhola Chowdry*, 17 W. R., 242). The cultivation under the capacity of a ticcadar would not give him a right of occupancy—(*Ram Surun v. Veryag Mahata*, 25 W. R., 554; *Thomas Savi v. Panchann Roy*, 25 W. R., 502; compare *Mukundalal Debi v. Crowdy*, 17 W. R., 274). Persons who do not hold land as raiyats or in any other sense than as middlemen receiving rent from the actual cultivators are not within the purview of this section—(*Gopee Mohun v. Sheeb Chunder* 1 W. R., 68; *Hurish Chunder v. Alexander*, Marsh, 479.) An under-raiyat

Under-raiyat.

who is not a raiyat under section 4 and clause (3) of section 5 cannot be a settled raiyat—(*Ketul Gain v. Nadur*, 6 W. R., 168; *Moulavi Abdul Jubbur v. Kalee Charan*, 7 W. R., 81; *Haran Chunder v. Mookla Sundari*, 1 B. L. R., A. C., 81; 10 W. R., 113; *Nil Kumul v. Danesh Sheik*, 15 W. R., 469; *Unuopurna v. Radha Mohun*, 19 W. R., 95; *Gilmore v. Surbessuri*, W. R., Sp., Act X, 72; *Hureelnur v. Jadu Nath*, 7 W. R., 114; *Ishan Chunder v. Hurish Chunder*, 18 W. R., 19; *Kalee Kisto v. Ram Churn*, 9 W. R., 344). The new section seems to go far beyond the old law; no person who is an under-raiyat, even if he be holding under an occupancy raiyat, or a raiyat at fixed rates, can be now a settled raiyat. This is virtually overriding the decision of *Ramdhun Khan v. Haradhnun*, 12 W. R., 404. In that case Markby, J., observed: "Section 6 does not exclude from the acquisition of the right of occupancy those persons who hold from raiyats, but only those persons who hold from raiyats themselves having no right of occupancy." The new law, however, does not admit an under-raiyat to be a raiyat at all, and sections 20 and 21 purport to confer fixity of tenure upon raiyats and not under-raiyats.

A co-sharer, by holding under other co-sharers, cannot acquire any right of occupancy—(*Raghubur v. Bishnu Dutt*, 2 W. R., Act X, 92). A joint owner under a mutual arrangement by all

Co-sharers.

the co-sharers, who pays rent for his right of occupancy, is not a raiyat in the sense contemplated in section 4, Act X—(4 W. R., Act X, 48; *Miturjit Sing v. Mr. W. Fitzpatrick*, 11 W. R., 206). The question will, however, depend upon the nature of the holding, *e. g.*, whether he holds as a co-sharer or as a raiyat. Where a co-sharer occupies a larger portion than his own share or the whole estate, by renting the land he occupies from one or more of his co-sharers, he may be sued for that rent under Act X of 1859 by the person or persons with whom he engaged—(*Kalee Persad v. Shih Latafut*, 12 W. R., 418.) "The question as to whether the parties," observed Jackson, J., in this case, "were landlord and tenant or not, is a question of fact. I am not prepared to hold that in no case can a co-sharer in an estate be a tenant of another co-sharer. I understand that the Judge also would not go so far as this. Then what are the circumstances which would establish that relationship. The Judge says 'attornment or otherwise.' It is stated in this suit that the relationship is established by the acts of the parties; by the fact that each co-sharer paid his fellow co-sharer directly the whole amount of rent due to him, and under the law applicable only to landlords and tenants brought suits for rent and obtained decrees; and that specially the defendant in this suit, when in exactly the same position as the present plaintiff, stated that he was the plaintiff's landlord and sued him

for rent for land held by the plaintiff as farmer of the defendant's co-sharer; and I think that the act of the defendant in bringing his suit was a virtual admission that as regards such tenures as the plaintiff now sues to recover rent upon, the parties stood in the relationship of landlord and tenant. The Judge was therefore wrong in law in holding that it was no evidence of the fact. There is evidence in the case, both oral and documentary, that the different co-sharers do recover their rents directly from each other according to their shares." The same view has been adopted in *Gooroo Prosunno v. Gobinda Prosad*, 1 W. R., 34. The mere fact of a division of a parent-estate, however, does not reduce a party to the position of a raiyat not liable to ejectment—(*Lalit Narain v. Gopal*, 9 W. R., 145.) A butwara, on the other hand, does not extinguish the rights of tenants, nor does the fact of one of the proprietors being the tenant destroy his tenant right, because another has had the land allotted as part of his share—(*Nathulal Chowdry v. Sadatlal*, Sp. W. R., 271.) A holding for twelve years under one of several co-proprietors gives a right of occupancy under section 6, Act X of 1859, provided the tenant has paid rent which payment he may, in the absence of fraud, make to any one of the co-proprietors whom he chooses—(*Mooktakeshi v. Koylash Chunder*, 7 W. R., 493. Compare *Ranee Sarutsundari Debia v. Mr. Charles Binny*, 25 W. R., 347 at p. 350; L. R. 5 I. A. 168.)

The holding must be as we have said as a raiyat, and a raiyat is primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners (section 5, clause 2). If then a person holds a land for a period of twelve years by sub-letting it to others or partly by sub-letting and partly by

Right to sub-let. cultivation, or for some time by cultivation, and for some time by sub-letting, under the definition of section 20, clause 1, it is doubtful if he could be a settled raiyat, and hence it is doubtful too if he could acquire a right of occupancy under section 21. If, however, once he is ripened into a settled raiyat by cultivation for a period of twelve years, does he cease to have an occupancy right as soon as he sub-lets his land to an under-raiyat? Clause 1 of section 21 seems to give an affirmative answer to this question. "Every person," it says, "who is a settled raiyat of a village within the meaning of the last foregoing section, shall have a right of occupancy in all land for the time being held by him as a raiyat in that village, so that a settled raiyat will have a right of occupancy only when he has held a land as a raiyat. The words 'for the time being held as a raiyat' imply that when a settled raiyat ceases to hold a land as a raiyat, e. g., by sub-letting, he will have no right of occupancy in the land held by him for the time being. We are not aware if the Legislature meant this for a positive check upon sub-infeudation. We should suppose, however, that the definition of 'raiyat' in clause 2 of section 5 is not intended to be exhaustive. We must have a regard for local custom and the origin of the tenancy (clause 4 of section 5). Sub-letting again may be consistent with the position of a cultivator. In *Ram Mungul v. Luckhy Narain*, 1 W. R., 70, a Division Court held that the mere fact that one who holds land sub-lets it, does not make him a middleman, and that the real question to be tried was whether the defendant was or was not a raiyat or one who held land under cultivation by himself or others who took from him under his supervision as a superior cultivator, or whether he was a middleman because he really did not cultivate in the sense of section 6, Act X, but was a general lease-holder or speculator in land rent." This rule was adopted in *Karoolal v. Luchmiput*, 7 W. R., 15. The definition, however, given in clause 2 of section 5 makes this point more clear. If the holder cultivates in one of the modes described in this clause

he is a raiyat. If, on the contrary, he severs himself entirely from the cultivation of the land and reduces himself to a mere rent-receiver, he is a middleman. The old section ran as follows: "But this rule does not apply to khamar, neejote, or seer land, belonging to the proprietor of the estate or tenure and let by him on lease for a term, or year by year, nor (as respects the actual cultivator) to lands sub-let for a term, or year by year, by a raiyat having a right of occupancy." Hence in *Kali Kishore v. Ram Churan*, 9 W. R., 344, Jackson, J., observed: "Section 6, Act X of 1859, distinctly alludes to the circumstance of a raiyat with right of occupancy sub-letting his land, and does not declare that such raiyat thereby loses his right, but that the sub-lessee thereby gains no right. It is very common all over the country for raiyats who have rights of occupancy to sub-let in the bazar; but that gives the zemindar no right to dispossess the raiyat with right of occupancy as the zemindar here has done." That portion of the law upon which this decision is based has not been re-enacted—see, however, section 85 and section 178, sub-section (3) clause (e) of the Act. The above decision was followed in *Jameer Gazi v. Gunai Mundle*, 12 W. R., 110. But see *Narendra Narain v. Ishun Chunder*, (F. B.) 22 W. R., 22, in which it has been held that when an occupancy raiyat sells his holding, his right of occupancy ceases. In *Bibi Sohodwa v. Smith*, 12 B. L. R., 82; 20 W. R., 139, S. C., Phear, J., said: "I cannot extend the mere right of occupancy beyond the right, on the part of the person entitled to it, to occupy and till the soil, either by himself, or his servants, or by his lessees or licensees, i. e., at the furthest, by persons who are in some degree subordinate to him and under his control, throughout the whole time of possession. See on this point notes headed 'Effect of a transfer of holding of an occupancy raiyat' under section 23. In *Dumri Sheik v. Bishessur Lal*, 13 W. R., 291, it was even held that an occupancy raiyat

Mokurari lease.

can grant a mokurari lease without the consent of his landlord, but such lease is only binding between him and the lessee, and if the landlord is not thereby deprived of any legal right which he possesses, and if he dispossesses the lessee without the assistance of the law, he is guilty of trespass. Leaving aside the question of sub-letting, it follows from the definition of 'raiya' that the land must be used for agricultural purposes, otherwise no right of occupancy is acquired. Thus it was held that a tenant who had obtained a plot of ground for building a house obtained no right of occupancy in the land. "The occupation," said Phear, J., "intended to be protected by this section (section 6, Act X), is occupation of land considered as the subject of agricultural or horticultural cultivation and used for the purposes incidental thereto, such as for the site of the homestead the raiyat or mali's dwelling-house and so on. I do not think that it includes occupation, the main object of which is the dwelling-house itself, and where the cultivation of the soil, if any there be, is entirely subordinate to that. I had occasion in the case of *Khollut Chunder v. Amirto*, reported in the first volume of the *Indian Jurist*, New Series, 426, to consider the matter very fully, and I see no reason now to alter the opinion which I then expressed—(*Kalee Kishen v. Sreemati Janki*, 8 W. R., 250.) Similarly no right of occupancy is acquired in land used for the erection of a school or a church—(*Ranee Shornomayi v. Blumhardt*, 9 W. R., 552.) In *Koylah Chunder v. Heeralal*, 10 W. R., 403, the High Court found that the land which was originally taken for horticultural cultivation being large in quantity (60 beeghas 15 cottas) cannot now be considered as entirely subordinate to the house which was erected on it, and that therefore Act X will apply. But where a tenant who was a breeder of horses, had occupied land for grazing, it was held that he acquired a right of occupancy in it—(*Fitzpatrick v. Wallace*, 11 W. R.,

231.) This will now follow from the explanation of clause 2 of section 5 which defines a raiyat. That explanation runs to the following effect: "Where the tenant of a land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it." So that a raiyat will now acquire a right of occupancy in a threshing field or pasture. Act X was not intended to apply to any land, except land of which the main object was cultivation—(Ramdhan v. Haradhan, 12 W. R., 404. In the matter of Bromo Moyee Bewa, petitioner, 14 W. R., 252, the Judges differed in opinion; "I have frequently held," observed Jackson, J., "that the provisions of Act X of 1859 did not apply to suits of that description, the land being occupied for the purposes of building, and not agriculturally or in the neighbourhood of lands occupied agriculturally." "I see nothing in the Act," said Mitter, J., "to justify any distinction between suits for arrears of rent on account of land used for agricultural purposes, and suits for arrears of rent on account of land used for other purposes." L. S. Jackson, J.'s opinion prevailed.

Homestead.

Compare Madun Mohan v. Stalkart, 17 W. R., 441; Kalee Mohan v. Kalee Kristo, 11 W. R., 183; Church v. Ram Toonoo, 11 W. R., 547; Rani Doorga v. Bibi Omedunnessa, 17 W. R., 151. *Per contra* it has been held that a suit could be brought under Act X for arrears of rent due on account of land used for building purposes—(Braja Nath v. Gopee Nath, 17 W. R., 183; Watson v. Gobindo Chundra, Sp. W. R., (Act X), 46; Sheikh Nasirali v. Sadutali, Id., 102; Bipro Das v. Wollen, 1 W. R., 223; Tarini Prosad v. Bengal I. Company, 2 W. R., (Act X), 9; Mathooro Nath v. Campbell, 15 W. R., 463. The whole question was, however, settled by the Full Bench decision in Ranees Durga Sundari v. Bibi Omedunnessa, 18 W. R., 235. The new Act has adopted the view of the Full Bench decision, and has taken particular care to lay down that a settled raiyat must be a cultivator, and must hold his land for the purpose of cultivation. The right of occupancy acquired by a cultivator under Act X of 1859, or Act VIII (B.C.) of 1869, is, however, as applicable to that portion of the land which is used for habitation as for that portion which is cultivated. In Mohesh Chunder v. Bisho Nath Does, 24 W. R., 402, Markby, J. observed: "I do not think it necessary to go through all the cases which have been referred to, but I think it desirable to refer to what I believe is the earliest case upon the subject, namely, the decision in 8 Weekly Reporter, p. 250. There the land in respect of which the right of occupancy was claimed was a piece of land let to a widow for the construction of a *basha-bari*. Mr. Justice Phear was of opinion that Act X of 1859 was not applicable to land let for such a purpose. In that judgment, Mr. Justice Bayley concurred; but he is particularly careful to point out that that decision would not apply to *bastoo* lands such as might be met with in an ordinary cultivator's holding, thereby clearly showing that, in the opinion of Mr. Justice Bayley, *bastoo* lands in an ordinary cultivator's holding would be the subject of provisions of Act X of 1859, and now of Act VIII of 1869 (B.C.). I am not aware that that opinion has been dissented from in any other case. It certainly would be a matter, I think, of some surprise if a raiyat with an ordinary holding, and having built his house upon a portion of it, were to find that, although he had a right of occupancy as to the culturable land, he had not a right of occupancy as to the rest. Both the Courts below have held that the land occupied for dwelling purposes by the cultivator is protected in the same way as the remainder of the tenure, and I think in so deciding those Courts have acted entirely in accordance with the law." This view it seems will obtain under the new Act, because though the definition of 'raiya' does not save his habitation, sub-clause (f) of clause (2) of section 76 makes the erection of a

dwelling house by the raiyat to be an improvement. Indeed it appears to me that sections 20 and 21 should be read with sections 76 and 77 and 79 of the Act, so that the improvements mentioned in sections 76 and 79 would be no bar to the retention or acquisition of the status of a settled or occupancy raiyat. Where the rent for *bastoo* land was paid by the raiyats to their landlords separately from the rent paid for the cultivated lands, but the tenure of the *bastoo* lands was a raiyatwari tenure, it was held that as a matter of law, the distinction in the mode of paying rent did not exclude those lands from the operation of Act X of 1859 or Act VIII (B.C.) of 1869—*W. S. N. Pogose v. Rajoo Dhoopes*, 22 W. R., 511, per Markby, J. Similarly it has been held that *bastoo* land upon which the raiyat's house is built, does not fall within the definition of land for building purposes—(*Naimadha Jowardar v. Scott Moncrieff*, 3 B. L. R., A. C., 283; 12 W. R., 140). A landlord who allows his tenant to invest capital in erecting buildings on land let for cultivation, and raises no objection for a considerable number of years, will not be allowed to disturb the holding. The fact of the building having been allowed to remain is *prima facie* proof that the land was let for building purposes—*Brojo Nath Chowdry v. Steuart*, 8 B. L. R., App., 51; 16 W. R., 216. A raiyat who relies upon a right of occupancy must be taken as admitting that the letting was of such a character as is contemplated by Act VIII of 1869 (B.C.) which applies only to agricultural holdings. Where land was let on the understanding that it was to be used for cultivation, the fact that the raiyat has acquired a right of occupancy does not alter any of the terms of the letting, except the conditions (if any) fixing a term for the tenancy. The statutory right of occupancy cannot be extended so as to make it include complete dominion over the land subject only to the payment of a rent liable to the enhanced on certain conditions. The landlord is still entitled to insist that the land shall be used for the purposes for which it was granted; and although a liberal construction may be adopted, it cannot extend to a complete change in the mode of enjoyment—(*Baboo Lal Sahoo v. Deonarain Sing*, 1 C. L. R., 294; 1 L. R., 3 Cal., 781). This case was distinguished in *Prosunno Kumar v. Jugunnath Bysak*, 10 C. L. R., 25, and it was held that where land has, with the consent of the landlord, ceased to be agricultural, and the tenant has since built a homestead, or used part of it for tanks or gardens, the nature of the tenure is not thereby changed, nor is the tenant thereby deprived of any right of occupancy which he might have acquired.

An indigo-concern or firm has no corporate or legal existence, so far as the

question of a right of occupancy is concerned, which can only be recognized in particular individuals—*Cannan v.*

Koylash Chunder, 25 W. R., 117; *Rai Kumal v. J. W. Laidlay*, 1 L. R., 4 Cal., 957. Jackson, J., observed in this case: "It appears to me that in point of fact to apply the terms of section 6 to a holding such as the present would be to extend the meaning of section 6 to a most inordinate and dangerous degree. It is no doubt the case that when a raiyat holds land which he may cultivate, the circumstance that he has sub-let that land to an under-tenant does not deprive him of the right of occupancy, or prevent such a right growing up. But the case is altogether different when the tenure is of such a nature that it could not be within the means of occupancy or cultivation of a particular raiyat, and here the fact is that there is no particular individual raiyat. Here is an association of persons constituting a firm who have a large capital, and who devote their energy to the improvement of the soil for the benefit of the country and also for their own benefit, and in respect of such a body, there is also an authority directly bearing on the case. In the case of *Cannan v. Koylash Chunder*, 25 W. R., 117 decided by Mr. Justice Macpherson and my brother Morris, it was expressly held

that the Agra Bank, as the representative of an indigo concern or firm, could not be regarded as entitled to plead a right of occupancy. They said,—“an indigo concern or firm has no corporate or legal existence which we can recognize in a suit like this. So far as the question of a right of occupancy is concerned, all that we can look at is occupancy by particular individuals; and as far as such occupation of this land goes, the present appeal fails.” In those observations we concur, and it would be impossible, we think, to hold that a firm or partnership could take the grant of land and by arrangement among themselves, continuing for a series of years by changes in the partnership, hand over the land from one person to another under the guise of a right of occupancy. What the firm of Robert, Watson & Co. took from the zemindars in this case was not a raiyat's tenure for the purpose of ordinary agricultural use. It was a tract of land amounting to an estate to be worked by them by means of capital for the purpose of carrying out a particular speculation. It appears to me that neither the terms of Act X of 1859, nor of Bengal Act VIII of 1869, contemplate the right of occupancy growing up in such a case as this.”

In a recent case Mr. Justice Field would not follow the decision of *Cannan v. Koylash Chunder*, 25 W. R. 117 or of *Rai Kumal v. Laidley*, I. L. R., 4 Cal., 957. With reference to the first he said “the report does not show the particular facts of the case with reference to which these observations of the learned judge were made. We do not know who were the persons who constituted the indigo concern or firm, or whether their names were upon the record, or whether there was any evidence to show that these persons had held for 12 years after they had obtained possession.” With reference to the second case he observed: “It is clear from the potta given at p. 955 that this was a case of an *para* lease, and that it was not like the present, which is a case of a *jote-dari* lease, that is, a cultivating lease.” Distinguishing thus from these decisions the case under consideration, he continued: “we think that this was a cultivating lease—a lease granted to the lessees for the purpose cultivating indigo; and so long as cultivation is contemplated, we think it is immaterial whether the cultivation intended is that of rice, jute, indigo or other crop. But then it is said that this was a lease granted to the firm of Robert Watson & Co., and under such a lease particular individuals cannot acquire a right of occupancy. If this lease had been drawn up by skilled legal agency, instead of Robert Watson & Co., there would have been inserted the names of the persons who then were members of that partnership. But inasmuch as the names of these persons could be ascertained on the principle *id certum est quod certum reddi potest*, we think that this must be taken to be a lease to the individuals who were at the time members of the firm of Robert Watson & Co., and the lessee acquired a right of occupancy.—(*Laidley v. Gour Govind*, I. L. R., 11 Cal., 501.)

It is doubtful if Mr. Justice Field was correct in this view. The whole Act would show that the word ‘raiya’ in section 6 of Act X of 1859 or Act VIII of 1869 B.C. was meant to protect a *bona fide* cultivator as he is ordinarily known in the peasantry of Bengal, and not an association of persons. In our ordinary parlance, by the word ‘raiya’ we do not understand a collection, body or firm but a raiya simple and pure.

The question, however, will not be free from doubt under the definitions of the new Act. The definition of a ‘settled raiya’ begins with the word ‘person,’ and a ‘person’ under the General Clauses Act (see *ante*, p. 25) includes incorporated associations of persons. No doubt this definition is controlled by the words ‘as a raiya’ (i. e., the ‘person’ must hold ‘as a raiya’ or he cannot grow into a settled raiya), but the definition of the word ‘raiya’ in section 5 is rather wide, and would include a ‘person’ who would cultivate by hired

servants and therefore an association of persons or a firm. An indigo or tea cultivating firm would not fall under the definition of tenure-holder because its purpose is not to collect rent or to bring the land under cultivation by establishing tenants upon it, but it may fall under the definition of a raiyat because its object is to cultivate the land by hired servants. This view which follows from sections 20 and 5 together can only be met on the ground that the object of the Bengal Tenancy Act was to amend and consolidate existing law with regard to the landlord and tenant, and not to revolutionise things, and that the application of the theory would be fraught with many evil consequences, because by reading sections 20 and 21, and 176 of the Act, together, all the indigo and tea concerns in this country would under this view be converted on the date of the operation of the Act into occupancy raiyats, in spite of any contract to the contrary. In sections 20, 21, 25 and 178 the object of the Legislature obviously was to protect weak persons from evictions, and to encourage the growth of occupancy right in them at the expense of the laws of contract. If provisions made with this view be applied in favour of strong persons like an organised association, it would be a hardship upon the zemindars, and they would refuse in future to admit any firm into their zemindari, a consequence which would be prejudicial to the interests of the country. The equitable view should therefore be that which has been adopted by Mr. Justice Jackson in *Rai Kamal Dasi*, quoted above. Though an indigo or other firm may technically fall under the definition of 'raiya' in section 5, we must not forget that under its sub-section we must have regard to 'local custom' to determine whether a tenant is a tenure-holder or a raiyat, and an indigo-planter or a firm of a similar nature will hardly be considered as a raiyat in the general acceptance of the country.

The definition of the word 'raiya' as given in section 5 does not include a necessary element of payment of rent. To hold for the purpose of cultivation is sufficient to make a person a raiyat, though his interest must be a subordinate interest to the superior holder. Hence, whether a raiyat pays rent in kind or

Bhagdhari and bhaoli tenants.

cash he acquires a right of occupancy by 12 years' possession. Therefore it has been held that ordinarily a holding under a *bhagdhari* tenure (i. e., where the rent consists of a portion of the produce) would establish a right of occupancy under section 6, Act X of 1859—(*Hurrehur v. Bissessur*, 6 W. R., (Act X), 17.) So a *bhaoli* tenure may be a *goozusta* tenure, and a raiyat who pays rent in kind and is in possession of or cultivates land for a period of twelve years has a right of occupancy in the land so held or cultivated by him, so long as he pays the rent in kind for the same—(*Jutto Moar v. Musst. Basmutt Koer*, 15 W. R., 479.) It is not essential to the acquisition of occupancy rights that the raiyat should have paid rent in respect of the land.

Payment of rent not essential for acquisition of the occupancy right but for its retention.

It is sufficient, under section 6 of Act VIII of 1869 B.C. that the person claiming to have acquired such rights should have cultivated or occupied the land for a period of twelve years, and should be a raiyat—(*Narain Roy v. Opnit Misser*, 11 C. L. R., 417). After reciting section 6, Mitter, J., observed: "It is clear from the language of the section that for the acquiring of the right of occupancy two conditions are only necessary, viz., (1) the cultivation or holding of land for 12 years, and (2) that the person holding or cultivating should be a raiyat. No doubt in many cases the fact of non-payment of rent would be a valid ground for holding that the land was held by a person not as a raiyat but as a trespasser. But where notwithstanding non-payment of rent the holding or cultivation as a raiyat is established for 12 years, the essential conditions of the section are fulfilled. The Mounsaiff was of opinion that the words "so long as he pays the rent

payable on account of the same" show that the payment of the rent is an essential requisite for the acquiring of the right of occupancy. But he is mistaken in this, because the section says that a raiyat, &c., shall have a right of occupancy so long as he pays rent, &c., i. e., a raiyat who fulfils the two conditions mentioned above shall have a right to occupy the land (which means he cannot be evicted against his will) so long as he pays rent, &c. Therefore the acquiring of a right of occupancy is dependent only upon the two conditions mentioned above, but the maintaining of it is further dependent upon another condition, viz., payment of rent. It was contended that it would be anomalous to hold that, although a right of occupancy may be acquired by a raiyat who has not paid any rent, yet the moment it is acquired it would be extinguished if the payment of the rent be withheld. But reading section 6 along with sections 22 and 52 of the Rent Act, it would appear that the construction we adopt is not open to this objection. No doubt non-payment of rent works as a forfeiture of the rights of occupancy and renders a raiyat, whether he has a right of occupancy or not, liable to be evicted (see section 22). But a raiyat having a right of occupancy cannot be evicted, otherwise than in execution of a decree or order under the provisions of the Rent Act. Therefore before a landlord can really reap the benefit of the forfeiture of a right of occupancy incurred by non-payment of rent, he must bring a suit to eject the raiyat, and whenever such a suit will be brought, the raiyat will have the power to prevent the forfeiture by paying the arrears of rent under the provisions of section 52. In this respect section 52 makes no difference between an occupant and a non-occupant raiyat. Both have the same privilege of preventing eviction by the payment of the arrears of rent within a certain time."

But the mere omission to pay rent for five years does not, of itself, amount to forfeiture of a raiyat's right of occupancy, and will not be sufficient to sustain an action by the landlord for the recovery of the raiyat's holding—(*Musyatulla v. Noorzahan*, I. L. R., 9 Cal., 808; *Brojendra Kumar v. Bungo Chunder Mundle*, 12 C. L. R., 389.)

Where, however, a tenant having a right of occupancy abandons his holding and ceases to pay rent for five years, it is not a right construction of section 22 of Bengal, Act VIII of 1869, to say that the landlord may not put another tenant into possession without the formality of a suit. Section 6 of Bengal, Act VIII of 1869 expressly limits the duration of occupancy right by the words "so long as he pays the rent payable on account of the same," and distinct abandonment and cessation to pay rent disentitle the tenant from enforcing the rights which he may have previously enjoyed—(*Golam Ali v. Golap Sundari*, I. L. R., 8 Cal., 612.) Where a raiyat had been in possession of land, but had been dispossessed, and for some years previous to suit had failed to pay rent, it was held that at the time of the institution of a suit for recovery of possession, he had no subsisting title and consequently his suit must fail.—(*Hem Chunder v. Chand Akund*, I. L. R., 12 Cal., 115.)

Where land held by tenants with right of occupancy was completely submersed for a number of years, and during the period of such submersion, no rent was paid by the tenants—*Held*, that the tenants had, by non-payment of rent during the period of submersion, forfeited their rights of occupancy—(*Hem Nath v. Ashgur Sardar*, I. L. R., 4 Cal., 894.)

A possession which amounts simply to a *moostagiri* right to collect rents from raiyats is not such a possession as confers a right of occupancy—(*Lalla Ishur Dutt v. Bhaka Chowdry*, 17 W. R., 242.) A *ticcadar* occupying land merely as the assignee of the zemindar, and cultivating because of the opportunity thus afforded, cannot,

Ticce, moostagiri, proprietorship; and merger.

under colour of that character, claim the right of occupancy under section 6, Act X—(*Wooma Nath Tewari v. Koondon Tewari*, 19 W. R., 177.) A ticca lease cannot confer a right of occupancy, and the ticcadar is bound to restore his holding to the zemindar in the condition in which he got it when his lease is over—(*Rāmsārūn Sahoo and Junki Sahoo for self and guardian of Ram Kalāyan Sahoo, Ramphul Mahaton and Gunga Bishen Rawat v. Veryag Mahaton*, 25 W. R., 554.) Where a person held raiyati lands alternately as cultivator and farmer for about 50 years—*Held* that his cultivation for broken periods would not deprive him of his right of occupancy under section 6, Act X, and that the doctrine of merger did not apply to such cases—(*Mokundilal Doobe v. L. G. Crowdy*, 17 W. R., 274; 8 B. L. R., Ap., 95.) Where a person holding some land at first as a raiyat, subsequently obtained a farming lease of it, and thus became assignee of the landlord's interests, and took advantage of his position to allow himself to acquire a right of occupancy as a raiyat; *held* that the proprietor on the termination of the farming lease, was entitled to have the land back free of all encumbrances. Although the doctrine of merger does not hold in this country, and the same person may hold a piece of land both as raiyat and farmer distinctly, yet, as the raiyat's occupation is a possession adverse to that of the landlord, it follows that in any case in which in consequence of the two interests being held by the same person, the landlord's will and restraining power as against the tenant are in abeyance, the raiyat's right is also so far in abeyance that it cannot undergo any change until the landlord's rights are released from the custody of the tenant. Where a raiyati interest co-exists with a farming title, the raiyati interest must remain unchanged in character during the currency of the farming lease—(*Thomas Savi v. Panchannan*, 25 W. R., 503.)

In a suit by the purchaser in 1878 at a Government revenue sale against the former proprietor for possession of the land sold, the defendant alleged that his predecessors in title purchased the land from Government in 1861, and that he and his predecessors in title held it till 1878, but that his predecessors in title, in addition to holding an absolute gujastadari right, had been in possession as occupancy raiyats since 1263. *Held* (1) that the defendant was not entitled to claim occupancy rights through his predecessors in title as he had not inherited from them, and (2) that during the period he held possession as proprietor the power to acquire a right of occupancy under section 6 of Act VIII of 1869 B.C. was in abeyance—(*Lal Bahadur Singh v. E. Solano*, 12 C. L. R., 559; 1 L. R., 10 Cal., 45. The judgment in this case runs thus: "In an unreported case, *vis.*, Regular Appeal No. 152 of 1877, decided on the 25th February 1879—*Kishen Prosad Singh v. Rajah Radha Persad Singh, Garthi, C.J.* with reference to the contention put forward in that case, *vis.*, that one of the parties was entitled to a right of occupancy as he had held the lands in suit in that case in the double capacity of a raiyat and as proprietor, said: 'But we think that this view is contrary both to the letter and spirit of the Rent Law. A man cannot occupy the double character of landlord and raiyat, or make a pretence of paying rent to himself for the purpose of acquiring an occupancy right against other people.' It was held in that case that under the circumstances no right of occupancy could be acquired. The Chief Justice was of opinion that a raiyati holding would merge in the proprietary interest after the purchase of the latter. It is not necessary for us to express any opinion upon this question, *vis.*, whether a raiyati interest merges and becomes extinguished as soon as the raiyat purchases the estate in which the raiyati holding is situated, but the learned Chief Justice held in this case for the reasons given in his judgment that the raiyats could not acquire a right of occupancy under the circumstances set forth above. In the case of *Savi v. Panchannan*, 25 W. R., 503, it was held that, although a

raiyyati right would not merge, still it would remain in abeyance so long as the raiyat would be in possession of the estate in another capacity. Mr. Justice Ainslie, who delivered the judgment in that case, was also one of the Judges in another case reported in 17 W. R., 274. That case was decided by Mr. Justice Looch and Mr. Justice Ainslie. At first sight it would appear that that case was inconsistent with the decision of the learned Chief Justice referred to above, but the explanation that Mr. Justice Ainslie gave of his views upon the subject in the latter case of *Savi v. Panchanan*, goes to show that so far as the actual decision of the subject is concerned, there is no inconsistency between the decision in 17 W. R., 274, and the unreported case cited above. Both in the cases reported in 17 W. R., 174, and 25 W. R., 503, the Judges held that, though the raiyyati interest did not merge, yet so long as the raiyat remained in possession of the land in a double capacity, *i. e.*, as landlord and as raiyat, he could not acquire a right of occupancy under section 6 of Act VIII of 1869 (B.C). In this view we entirely concur. Section 6 provides that cultivation or holding for a period of twelve years confers upon a raiyat a right of occupancy, *i. e.*, a right to remain upon the land against the will of the landlord. This right of occupancy must, therefore, be acquired against somebody, and if the raiyat is in possession of the land in a double capacity both as a raiyat and as a malik, it is almost impossible to conceive how he can under these circumstances acquire a right of occupancy against himself. Therefore a reasonable view of the law is, that during the time a raiyat remains in possession of the land in such double capacity, the operation of the acquisition of the right of tenancy remains in abeyance."—*Per Mitter and Wilkinson, J.J.* For a fuller judgment of the cases, reported in 25 W. R., 503 and 17 W. R., 274, see notes under section 22, *post*.

The right of occupancy is a right given to a raiyat continuing only so long as the raiyat pays rent for the land he holds, and though the proprietor holding as the raiyat pays rent for the land he holds, and though *benami*. it cannot be affected by a wrongful eviction, still when the zemindar acquires the land by purchase and takes possession, even in the *benami* name of a third party, seeing that he cannot pay rent to himself, the right is gone and cannot be subsequently revived.—(*Radha Govind Koer v. Rakhal Das Mukerji*, 1 L. R., 12 Cal., 82).

A raiyat occupying and cultivating land for more than twelve years under a landlord who has no title to the land, nevertheless acquires a right of occupancy. The right is one which will grow even under a trespasser, or a letting of a co-sharer. is not conferred by any lessor, but which, by virtue of the law, grows up in the raiyat from the mere circumstance of cultivating the land for twelve years or upwards and paying rent due thereon—(*Zoolfan Bibi v. Radhika Prosunno*, 1 L. R., 3 Cal., 560; *Syud Amer Hossein v. Sheo Suhae*, 19 W. R., 383; *Pandit Sheo Prokash v. Ram Sahai*, 8 B. L. R., 165). If land was let by one of several owners, the raiyat will acquire a right of occupancy—(*Muktakesi v. Kailas Chunder*, 7 W. R., 493).

For a period of twelve years continuously, &c.—This section has a retrospective operation. So under Act X of 1859, it was held that the Legislature intended that a holding for twelve years, whether wholly before or wholly after, or partly before and partly after the passing of Act X of 1859, should entitle a raiyat to a right of occupancy—(*Thakurani Dasi v. Bishessur Mukerji*, 3 W. R., Act X, 29, F. B.) A potta granted previous to the date of the passing of Act X is subject to the same rules of interpretation as a potta granted subsequent to that date, and the proviso contained in the following section would equally apply

to pottas granted before or after the promulgation of Act X—(Pandit Sheo Prokash v. Ram Sakoon, 17 W. R., F. B., 62.) The continuous possession for twelve years which is the subject of this section, must be a possession under one and the same right. "In our opinion," remarked Macpherson, J., "the right of occupancy acquired under section 6 must be an occupancy of one and the same kind, that is to say, it must be occupancy by the person pleading it, or by his father or some other person from whom he inherits. Here the first five years' occupancy relied on by the plaintiff were years during which the land was cultivated and held, not by the plaintiff alone, but by the plaintiff and Khoda Bux. It seems to us that this is a distinct and different holding from the subsequent holding by the plaintiff alone. The plaintiff has therefore failed to prove that he cultivated or held the land for twelve years, and thereby acquired a right of occupancy"—(Sheik Mahomed Chaman v. Ram Persad Bhuknt, 8 B. L. R., 338; 22 W. R., 52, note.) This decision has been expressly over-ridden by clause 4 of section 20 of the new Act. In A. J. Forbes v. Ramlal Biswas, 22 W. R., 51, Phear, J. said: "This right may be in its inception joint with other persons; for if, by the death of co-sharers, it had ultimately become a sole right in the plaintiff himself, still it would have been continuous throughout in its nature." Land which is held as one tenure is either subject to a right of occupancy as a whole or it is not subject to any rights of occupancy as to any part of it. If the whole land has been held for more than twelve years then the tenant has a right of occupancy, but if within twelve years the tenant has been allowed to take possession of fresh lands, and such addition was intended to create a fresh tenure, then as regards the whole a right of occupancy has not been acquired, although a portion has been held for more than twelve years—(Amar Chand. v. Bakshee Pyekar, 22 W. R., 225.) This decision will not be operative under the new Act Under clause (2) of section 20, and clause (1) of section 21, the raiyat would acquire a right of occupancy to the whole land in the above case. Whether the land has been held under renewed leases or a continuous lease is not material. In either of these cases, holding land as a raiyat, if for a sufficient period, gives a right of occupancy—(Khujurunnessa v. Ahmed Reza, 11 W. R., 88.) A raiyat who has cultivated or held a piece of land continuously for more than twelve years, but under several written leases or pottas, each for a specific term of years, is entitled to claim a right of occupancy in that land. Neither the mere fact of a raiyat taking a lease for a term of years, nor the mere existence of the right of re-entry on the part of the landlord amounts to an express stipulation within the meaning of section 7, Act X of 1859, so as to prevent the right of occupancy being acquired under section 6—(Pandit Sheo Prokash v. Ram Sahai, 17 W. R., F. B., 62.) "The whole question," observes Couch, C.J., in this case, "turns upon what is the meaning of an express stipulation contrary to the raiyat acquiring the right of occupancy. Now where there is a potta for a fixed term, no doubt at the expiration of that term, the landlord has a right of re-entry upon the land; and if the raiyat does not give up possession, the landlord may recover the land from him. The landlord need not re-enter upon the land if he does not think fit; he may and often does allow the tenant to remain in possession of the land. I cannot consider that the right of re-entry which arises by reason of the expiration of the term named in the potta can be regarded as an express stipulation that the raiyat shall not, if he occupies the land for more than twelve years, acquire the right of occupancy given by section 6." The difficulty that the learned Judges felt in this case does not now exist. Section 7 has been repealed and clauses (a) and (b) in sub-sections (1) and (3) of section 178 of the Act provide that nothing in any contract between the landlord and tenant shall bar

the acquisition of an occupancy right. Similarly in *Narain Sing v. Munsoor Rao*, 25 W. R., 155, it was held that possession through a succession of pottas, each for a shorter period than twelve years, but altogether carrying a tenure beyond an aggregate term of twelve years, clearly gives a tenant a right of occupancy; yet any solenama filed in the case and purporting to waive any right acquired by the tenant, must be considered. See, however, clauses (b) and (c) of sub-sections (1) and (3) of section 178 of the present Act. See also 25 W. R., 114. In *Golam Panjah v. Hurish Chunder Ghose*, 17 W. R., 552, the raiyat held for more than twelve years under an ijaradar, and at the expiration of the ijara the zemindar contended that his right of occupancy did not grow, and that he is liable to ejectment. Mitter, J., observed: "It has been said that the possession of the defendants commenced under a jotedari right created in their favor by the ijaradar, and that the plaintiff is not bound to recognise a possession held under such a right, now that the term of the ijara has come to an end. I think this circumstance cannot affect the application of section 6 to this case. That section lays down a particular condition which must be fulfilled in order that a raiyat may claim a right of occupancy, that condition being continuous holding as a raiyat for a period of twelve years. It is not denied that the defendants have held the disputed land as raiyats for that period and upward; and that being so, I cannot understand on what ground it can be contended that the defendants are not entitled to the benefit of the section above referred to." In this case it was also held that a tacit understanding that the ijaradar should give up possession on the expiry of the lease is not an express stipulation within the meaning of section 7 of Act X of 1859, and it was doubted if such an understanding between the zemindar's predecessor and the ijaradar can affect the raiyat. In *Mookundo Lal v. L. S. Crowdy*, 17 W. R., 274, it was held that where a person held raiyati lands alternately as cultivator and ticca lessee or farmer continuously for a period of about fifty years, his cultivation of the lands for broken periods would not deprive him of his right of occupancy under section 6, Act X of 1859. Loch, J., observed: "We think the doctrine of merger does not apply to this case, for the defendant, notwithstanding the leases, continued to hold the lands, as he always had done previously, viz., as a cultivator. We do not mean to say that the defendant as lessee could confirm his own right of occupancy. But we think that during the period of the lease, the power of eviction as regards him was in suspense, and when the lease expired he was still, as he had always been, the actual cultivator." Ainslie J., said in the same case: "The lands in the present case are not khamar lands but raiyati lands. They were subject to the accrual of some right in the raiyat other than that derived by express grant from his landlord; and it seems to me that such rights do not merge in ticca leases taken from the zemindar. It has been nowhere proved that in the intervals between the ticca leases the defendant entered into possession under new arrangement with the zemindar. He appears to have continued in possession as a matter of course, and on the expiry of such ticca lease, to have resumed without any question the position he was holding at its commencement. No doubt the defendant as farmer would not, by his own neglect to exercise the powers of the landlord, create for himself any title as raiyat against the zemindar. But, on the other hand, he lost no title or interest that he had as a raiyat. If his raiyati interest be taken or suspended during the whole period of the existence of the leases, we still find that he has been holding for a period of 21 years, and that in the whole term of 47 years, commencing in 1231 F. S., his occupation has never been interrupted by the holding of any other raiyat." In *Thomas Savi v. Panchanan*, 25 W. R., 503, the defendant was from Kartic 1272 to Aayin 1278 assignee of the landlord's interest under an ijara

lease for six years. It was doubtful if before 1272 he had any raiyati interest in the land, but assuming that he had such a right it would not go beyond 1267. At the expiry of his ijara, he did not quietly surrender the leased property, and consequently a notice was served upon him in Bhadra 1279, calling upon him to ~~absent~~ ^{absent} from cultivating and to vacate from Kartik of that year. The Court observed (Ainslie, J., delivering the judgment): "It seems to us that the defendant must be taken to have been holding over as farmer for this last year, so that he was in fact assignee of the landlord's interest up to the end of Asvin 1279. He was therefore, the person who had the power to terminate the raiyati holding by virtue of which he now claims, and so long as he remained as middleman, the landlord could not come in to deal directly with the raiyats. It was through his own forbearance that the present claim has grown up, and there can be no equity in allowing him to stand by idle in order to create a right in himself adverse to his landlord whose interest he as farmer was bound to protect. Granting that a raiyati interest may co-exist with a farming title, I think it must be held that the co-existing raiyati interest is the same in extent and quality at the end as at the beginning of the lease of the farm. Whatever may be the case as to other tenants, as against the farmer himself, the lessor has a clear right to have compensation for any change to his prejudice caused by him (the farmer) and this not merely by way of damages, but by having the property restored to its original state when this is practicable. Thus, if the defendant had no right of occupancy at the commencement of his farming lease, he cannot have acquired one during its currency. This view of the law was taken by Mr. Justice Loch and myself in the case of *Mukunda Lal Doobe v. Crowdy*, 8 B. L. R., App., 95. This view may lead to some difficult questions, but their solution is unnecessary in the present case, for it is only by continuing the raiyati interest to the very last day on which the farming title continued to exist that an occupation of 12 years is made out. Baboo Mohini Mohan Roy contended that under section 6, Act VIII of 1869 (B.C.), the right of occupancy is not limited by any proviso, save that mentioned in section 7, but that it comes into effect absolutely the moment twelve years' continuous occupation as a raiyat has been completed. But then the question is,—what is meant by occupation as a raiyat. I, in effect held, in the case cited, and still hold that it means an occupation which, though subordinate is in a sense adverse to the landlord so far as it qualifies his power of dealing with the land at will. Where there is practically no restraint of the landlord's will, in consequence of the will and the restraining power being in the same person, there can be no opposition (in the qualified sense intended above) to the landlord such as is inherent in the holding of a raiyat, and while this state of things lasts, the raiyati right is in so far in abeyance that it cannot undergo any change in its character." The mere fact that the person to whom a raiyat has for some years paid rent had no title, cannot take away from him the character of raiyat, or prevent him from counting those years in the time necessary to give him a right of occupancy—(*Syud Ameer Hossein v. Shao Sahai*, 19 W. R., 338.) A raiyat occupying and cultivating land for more than twelve years, under a landlord who has no title to the land acquires a right of occupancy. The right is not one conferred by any lessor. It is a right which by virtue of the law grows up in a raiyat from the mere circumstance of cultivating the land for twelve years and upwards and paying rent due thereon—(*Zoolfin Bibi v. Radhika Prosunno*, 1. L. R., 3 Cal., 560; see also *Pandit Shao Prokash v. Ram Sahai*, 8 B. L. R., 165.) A yearly tenant of a jote cannot claim a right of occupancy under section 6, Act X, by adding the time during which his predecessor held it, even though the jote be transferred with the consent of the zamindar, unless the original jote is proved to have been a perpetual jote. When

the jote, not being a perpetual one is transferred even with the consent of the zemindar, the transferee merely acquires a new jote on the terms on which the old tenure was held, but he is not entitled to make up his right of occupancy by adding the time during which his predecessor held it—(*Tara Prosad v. Soorjo Kanta*, 15 W. R., 152). The possession of a father or other ancestor from whom a raiyat inherits may be added in this manner, but not the possession of a vendor—(*Hyder Bux v. Bhubend-adev*, 17 W. R., 179. See also 22 W. R., F. B., 22. Also, Messrs. Watson & Co. v. Rani Sarat Sundari, 7 W. R., 395.) *Per contra* it has been held that where the zemindar consents to the transfer of the tenure from one raiyat to another, the possession of both must be considered continuous and the right of occupancy to date from the time of the first holder—(*Huro Chunder v. Mr. Dunn*, 5 W. R., Act X, 55.) A holding by a raiyat and his father for many years creates a right of occupancy which will prevent the zemindar from ousting the raiyat except by due course of law—(*Nim Chand v. Moorari Mundle*, 8 W. R., 127.) In a suit by a zemindar, for ejectment when the raiyat pleads continuous possession for twelve years, and it is found that the raiyat was evicted during that period, but got back into possession, the raiyat's right of occupancy will depend on whether the eviction was wrongful or not, the onus being on him to prove that the eviction was wrongful—(*Mahomed Gazee Chodry v. Noor Mahomed*, 24 W. R., 324.) See, however, clauses (6) and (7) the present section and section 87 of the Act; Compare *Tirthanund v. Herdu Jha*, I. L. R. 9 Cal. 252. Occupation for twelve years cannot give a right of occupancy where the occupation by the occupant alone did not extend to twelve years, nor was it the occupation of land which he had inherited.—(*Kherode Chunder v. Mr. D. M. Gordon*, 23 W. R., 237.)

Land situate in the village.—This must be read with the foregoing context "held as a raiyat"; hence land here means agricultural or horticultural land. A tenant is not a raiyat unless he holds the land for the purpose of cultivation. The word 'land' has not been defined. In Act V (B.C.) of 1867, for all subsequent enactments of the Bengal Council, 'land' has been interpreted to 'include houses, buildings and corporeal hereditaments and tenements of any tenure, unless where there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure.' But the present Act being an India Council Act, and the General Clauses Act (Act I of 1868) not having defined the word 'land,' the interpretation given to it in the Bengal Council Act referred to will not hold good. In the original Bill of the Rent Commission an attempt was made to define land, but it was abandoned on account of the intrinsic difficulties attached to it. The draft definition was to the following effect: "Land includes woods and water thereupon: when applied to land cultivated or held by a raiyat, it means land used, or intended to be used, for agricultural or horticultural purposes, or the like. In chapter XVIII, it means (a) tenures, under-tenures, and holdings; (b) land used, or let to be used, for agriculture, horticulture, pasture or other similar purposes, or for dwelling-houses, manufactures, or other similar buildings; and (c) rights of pasturage, forest rights, fisheries, and the like. Explanation:—*Bastu* or homestead land is land used for agricultural purposes when it is occupied by a raiyat, and together with the land cultivated by such raiyat forms a single holding." The words 'held as a raiyat' have simplified the meaning of the word 'land' in this. See section 5, clauses (2), (3) and (4), and sections 76 and 79 of the Act. See also notes under clause 5 of section 3 *ante*, pp. 31—35.

The land must therefore be used for agricultural purposes, otherwise no right of occupancy is acquired. Thus, it was held that a tenant who had obtained a plot of ground for building a house, obtained no right of occupancy in the land. "The occupation," observed Phear, J., "intended to be protected by this section, is occupation of land considered as the subject of agricultural or horticultural cultivation, and used for purposes incidental thereto, such as for the site of the homestead or the dwelling-house of the mali"—(Kaleo Kishen v. Sreemati Janki, 8 W. R., 251.) Similarly no right of occupancy is acquired in land used for the erection of a school or a church—(Ranee Shornomayi v. Blumhardt, 9 W. R., 552.) Occupancy right will not accrue in any land, except land of which the main object was cultivation—(Ram Dhun v. Haradhun Paramanik, 12 W. R., 404; Khellut Chunder v. Umirto, 1 Indian Jurist, N. S., 426.) Lands situated in a town, or used for building purposes, and not for horticultural or agricultural purposes, are not the subject of the legislation of Act X of 1859, and therefore no right of occupancy can be acquired under this section in such holding. In the matter of Bromo Mayi, 14 W. R., 252; Madan Mohan Biswas v. Stalkart, 17 W. R., 441; Kaleo Mohan v. Kaleo Kristo, 11 W. R., 183; Church v. Ram Tanoo Shaha 11 W. R., 547; Rani Doorga Sundari v. Oomdutunnessa, 18 W. R., F. B., 235. *Per contra*, Brojonath v. Gopeenath Shaha, 17 W. R., 183; Watson & Co v. Gobinda Chunder Sp. W. R., Act X, 46; Sheikh Nasar Ali v. Saadut Ali, *id.*, 102; Bipradas De v. Wollen, 1 W. R., 223; Tarini Persad Ghose v. Bengal I. Company, 2 W. R., Act X, 9; Mothoora Nath v. Campbell, 15 W. R., 463. The Full Bench decision in Rani Doorga Sundari settled the point. See fully quoted at pp. 33, 34 *ante*. The present section is more clear. It will evidently exclude land entirely for buildings from the right of occupancy—(Mohurali Khan v. Ram Ruttun, 21 W. R., 460.) A landlord, however, who allows his tenant to invest capital in erecting buildings on land let for cultivation, and raises no objection for a considerable number of years, will not be allowed to disturb the holding. The fact of the building having been allowed to remain is *prima facie* proof that the land was let for building purposes—(Brojonath v. Stewart, 16 W. R., 216.) But *bastu* land upon which the raiyat's house is built does not fall within the definition of land let for building purposes—(Naimuddi Jowardar v. Scott Moxcrieff, 12 W. R., 140; W. G. N. Pogoso v. Raju Dhopec, 22 W. R., 511.) There can be no right of occupancy in anything but land; a raiyat who has held a julkur for a number of years obtains no right of occupancy in it—(Wooma Canto v. Gopal Sing, 2 W. R., Act X, 19.) So that when the julkur dries up, the land below does not, as a matter of course, become the right of the holder of the julkur—(Bishenlal Das v. Rani Khyrunnessa Begum, 1 W. R., 78. A right of occupancy cannot be gained in respect of a tank used only for the preservation and rearing of fish, and not forming part of any grant of land or an appurtenance to any land, even though possession may have been held for more than twelve years—(Siboo Jelya v. Gopal Chunder, 19 W. R., 200.) "No doubt," observed in this case, Couch, C.J., "it may be said that a tank comes under the word land, as land covered with water, but it is to be land cultivated or held; and we think, in considering whether this tank comes within the provisions of Act X of 1859, we must do what was done in Ranee Doorga Sundari v. Oomdutunnessa, 9 B. L. R., 101, *i. e.*, we must look at all the provisions of the Act. Following that rule in the present case we think we cannot say that the provisions of Act X of 1859 are applicable to such a tank as this is. For instance, the provision in section 112 of the Act, which was noticed in that case, respecting the recovery

of the rent of the land by distress, is not applicable to such a tank as this. Following that rule we are of opinion that it cannot be said that a right of occupancy was gained under the Act by the parties in possession of this tank, although for more than twelve years."

A right of occupancy in land includes the same right in respect of a tank appurtenant to the land. But a right of occupancy can be acquired in a tank with only so much land as is necessary for the tanks—(*Nidhi Krishna v. Ram Doss Sen*, 20 W. R., 341.) "Where land is let for cultivation, and there is a tank upon it, the tank would go with the land, and if there was a right of occupancy in the land, there would be a right of occupancy in the tank as appurtenant to the land. But here the tank is the principal subject of the lease, and only so much land passed with the tank, as is necessary for it, namely, for tanks. This in reality is the tank, and according to the decisions there cannot be a right of occupancy acquired in it." (Per Couch, C.J.). So where a jotedar had exercised rights of fishery over two julkurs for more than twelve years not as the owner of jote (with which the julkurs were not connected), but as a tenant under a landlord, it was held that such possession did not confer upon him a right of occupancy—(*Shyam Narain v. The Court of Wards on behalf of the Rajah of Durbhaunga, minor*, 23 W. R., 432.) But apart from the special provisions of Act X of 1859 as to rights of occupancy, applying the maxim of *optimus interpret rerum usus*, it may be shown by evidence as to the nature of the enjoyment of any immoveable property what the grant in its origin really was. Accordingly, the frequent transfer of an interest in a tank without any change in the terms in the holding or in the amount of rent paid, extending over more than sixty years, was held to prove that the interest was a permanent and transferable one, which could be maintained against the proprietor of the taluk in which the tank was situate—(*Nidhi Krista v. Nistarini Dasi and others*, 21 W. R., 386.)

'Village' has been defined in clause (10) of section 3. This is an attempt to rehabilitate the *khulikasht* raiyat and disturb the economy of the peasantry as has grown up since 1859. The original division of raiyats was *khudhashts*, or those who cultivated the lands of the village in which they resided, and *paikashts*, or those who cultivated in the neighbouring village. The former had occupancy right, the latter were mere tenants-at-will. When Act X of 1859 was enacted, the village community was not in existence in Bengal, and Act X did away with the element of residence in the village, and adopted a prescriptive test of occupancy, viz., twelve years' occupation, whether in the village or out of it. The present Act keeps the prescriptive test introduced by Act X intact, and further circumscribes the rights of the settled raiyat in the village. The element of residence in the village has been thrown out in both the Acts. As to village, see notes under sub-section (2) of this section and also notes under clause 10 of section (3).

Whether under a lease or otherwise.—This is consistent with the case-law on the subject. Originally it was held that a raiyat

Lease.

who holds for more than twelve years under pottas granted only for terms of years, has no right of occupancy—(*Kebul Mahtoon v. Sheikh Sunnoo*, 5 W. R., (Act X), 80; *Domunoolash Sircar v. Mahmondie Nushyo*, 11 W. R., 556.) These decisions have been overruled by a Full Bench. A raiyat who has held or cultivated a piece of land continuously for more than twelve years, but under several written leases or pottas, each for a specific term of years, is entitled to claim a right of occupancy in that land. Neither the mere fact of a raiyat taking a lease for a term of years, nor the mere existence of the right

of re-entry on the part of the landlord, amounts to an express stipulation within the meaning of section 5, Act X of 1859, so as to prevent the right of occupancy being acquired under section 6—(Pandit Shoo Prokash v. Ram Sahai Sing, 17 W. R., 62, F. B.) In support of this, Baboo Nundo Lal See v. Ramu Sing, 6 W. R. (Act X) 38; Shibdyal Palit, 2 W. R. (Act X) 54; 4 W. R. (Act X) 1; Kbujoorannesa Begum v. Ahmed Reza, 11 W. R., 88: see also Golam Panjah v. Hurish Chunder, 17 W. R., 552; Narain Sing v. Mansur Raoot, 25 W. R., 155. Where a lease provided that at the expiration of the term, the landlord should be at liberty, to enter into a settlement with any one he pleased, and so put an end to the lessee's tenure, and the landlord notwithstanding allowed the tenant to continue the occupation paying rent,—held, that there was nothing in the stipulation which of itself operated to negative or destroy the tenant's right of occupancy—(25 W. R., 114.) The prohibitory clause of section 6, Act VIII of 1869 (B.C.) will not apply to the case of a raiyat holding under a person having a permanent transferable interest in the land, so as to deprive the raiyat of a right of occupancy in the land if he has fulfilled the other requirements of the law. The mere fact of his holding under a potta, which reserved only an annual rent year by year would not be sufficient to deprive him of the privilege, unless there were some words in the potta prohibiting him from acquiring that right—(Raghunath Sonar v. Mookund Das, 35 W. R., 213.)

*The mere fact of a lease being granted for a particular term, even where there is an express provision for re-entry by the lessor, does not prevent the accrual of an occupancy right under section 6, Act VIII of 1869 (B.C.), to a raiyat who continuously occupies for more than twelve years; nor is a right of occupancy already acquired destroyed by a grant of such a lease—(Mukhtar Bahadur v. Brojoraj Sing Chowdry, 9 C. L. R., 143.)

The present Act goes further than these decisions, because even a contract cannot prevent the accrual of an occupancy right. *Vide* (a) sub-section (3) of section 178.

20. (2). A person shall be deemed for the purposes of this section to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

“The first alteration in this chapter which appears to call for notice has reference to the area over which the status of a settled raiyat is to held good. In the 11th paragraph of our first report we referred to the inconvenience which might arise in certain exceptionally large estates from the status holding good over the whole estate, and this has given rise to considerable discussion. The Bengal Government, in the 22nd paragraph of its report of the 15th September 1884, stated that ‘the majority of the officers consulted disapproved of the definition of ‘settled raiyat’ as given in the Bill,’ and that ‘the proposal which found favour was the elimination of the word ‘estate’ from the definition.’ That Government, nevertheless, was of opinion that it was necessary to retain the word ‘estate’ in order to meet the danger of the acquisition of the occupancy-right being prevented by shifting raiyats from one village to another within the estate. It seemed to us that this danger was not so great as to justify the extension over all portions of an estate of the status of “settled raiyat” acquired in one portion of it, since estates are frequently divided among numerous tenure-holders, who would have no opportunity of examining each other's books, or knowing anything about each other's raiyats. The danger in either direction is

not serious, for in the vast majority of cases the raiyat is practically tied to his own village; and we felt, moreover, that by confining the status to the village we should be proceeding in closer conformity to the original conception of a *khudkaski* raiyat, which, as explained in the Statement of Objects and Reasons of the Bill, it has been always intended to keep in view." (S. C. B. III.)

Referring to the argument of the Lieutenant-Governor about the propriety of retaining the word 'estate' in this section, the Hon'ble Sir Stuart Bayley observed in his speech in the Council: "An 'estate' is, so far as this argument is concerned, an administrative fiction. It is simply the area registered in our books under one number, and liable to be sold as a single unit in case of arrears of revenue being unpaid. For rent purposes it has no meaning. It is not all the area owned by a landlord, for a landlord may have many estates. It is not the possession of a single landlord, for it may be divided among numerous shareholders. It may be part of a village, or it may be hundred villages. It may be the property of one man, or the property of hundred men. It may be managed direct by the landlord or indirectly by a number of agents, or it may, as in the case of the Burdwan Raja's estates, be let out into innumerable *patni* or permanent tenures (those tenure-holders subdividing it again), and in these circumstances what is one estate in the Collector's books becomes, for rent purposes several hundred different estates, the immediate owners or managers of which have no concern with one another, can see nothing of each other's books, and know nothing of each other's raiyats. The Burdwan estate is of course an exceptional instance from its size, but to a smaller extent the same thing happens all over the country, and it is on this point that the objection is most difficult to meet. The effect would be to say that a man having once acquired occupancy-rights in any part of an estate should retain those rights with respect to any land which he may in any way acquire in any other part of the estate. Now, an estate, as I have shown, may be, and frequently is, subdivided among numerous tenure-holders or numerous managers. Any of these men may perhaps be able to say if any particular person has settled rights in his own particular tenure, but he cannot possibly know this in regard to the other tenures of the estate. He may let a man into his village as a non-occupancy raiyat, and the latter can immediately turn round and say that having acquired occupancy rights in a village twenty miles away belonging to another tenure-holder, he claims to have them also in his new land. Clearly the Lieutenant-Governor's argument, deduced from the landlord's ability to know the character of his own raiyats, does not apply to cases of this class, and from this point of view his position is not an easy one to defend. The only reason for retaining the word 'estate' in the definition is to prevent a landlord from shifting his raiyat's holding from one village to another within his estate and so breaking down the occupancy right. Now to this argument the Lieutenant-Governor himself supplies the answer. He urges that 95 per cent. of the raiyats are so poor that they cannot hold land away from their own residence. This, if it shows that the danger to the landlord would not be great from retaining the word 'estate', it also shows that the possibility of shifting raiyats, except within reach of their residence, is equally limited. The advantage to the raiyats of carrying with them the occupancy-right from one village to another, within the same estate is very small, for it is shown that 95 per cent. of them are not in a position to take advantage of it, and the only raiyats who could take advantage of it, are those who have abandoned their own village, and its application in their case would be a misuse of the power and contrary to the proposed intention of the Bill. It is possible, no doubt, that shifting may occur in exceptional instances, where a landlord has several villages in his own direct management within reach of

the cultivator's residence, and where he is powerful enough. But in the case of a very powerful landlord, strong enough to do this and determined to break down the occupancy-right, I am afraid he will always find some door open, and it must be remembered that not only is the number of landlords who are in a position to do this very small, but also the number of tenants to whom the process can be applied is small also. I suppose that, when the Bill becomes law, nine-tenths of the tenants will have secure occupancy-rights in the land they cultivate, and of the remaining tenth it is but an infinitesimal portion that can be exposed to the danger above explained. On the other hand, as long as we confine the accrual of occupancy-rights to the village, we have an absolutely unassailable position. The *khudkash* raiyat's rights in the village are independent of those of the rent-receiver, and it matters not among how many estates the village may be divided. The raiyat is a *khudkash* raiyat of that village, and has by custom, as well as by old law, a right of occupancy in any land he may cultivate in that village without reference to whom he pays his rent; but when once with the object of stopping gaps we take up more ground and apply the same rule to the estate, our position is no longer defensible. Not only is the theory new and unsupported by prescription or sentiment, it is open to a variety of practical objections, and by taking extreme instances it can be made to appear hopelessly ridiculous. Looking as I do, upon the danger involved to the raiyats on the one hand, by omitting 'estate,' and to the zemindars on the other, by including it as for the most part of exceedingly small importance, I greatly prefer, for the above reasons, to omit it. I do not think any intermediate device, such as that of limiting the 'estate' to so much of it as is comprised in one *pergunnah*, or in one permanent tenure, or by extending the village to an artificial area within a fixed radius, would be found to work satisfactorily, and none of these suggestions wholly commended themselves to the Committee. I can only repeat my conviction that, though the danger of raiyats being shifted from one village to another within an estate is not wholly imaginary, it is not a serious danger, and that the provisions in the Bill, supplemented as they are by a working presumption, will sufficiently secure nine-tenths of the raiyats in their just right." (*Debate of the Council.*)

But the holding of different plots at different times must be under one and the same landlord. It was never the intention of the Legislature to allow the raiyats of rival zemindars to take advantage of this section and make out a right of occupancy for themselves. The language of the section is, however, defective.

20. (3). A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

This provision only refers to the acquisition of the right, and the right

Whose heir he is.

when acquired is declared to be heritable in section 26—see *Nimchand Borooah v. Mooraree Mundal*, 8 W. R.,

127.

In an earlier decision it was held that where the zemindar consents to the

But the possession of a stranger will not count in making out an occupancy-right.

transfer of a tenure from one raiyat to another, the possession of both must be considered continuous, and the right of occupancy will date from the time of the first holder—(*Huro Chunder v. Mr. A. D. Dunn*, manager of the Estates of Lukhee Debia Chowdrain, 5 W. R., Act X, 55); but not so, unless the holding is transferable by custom—(*Messrs. Watson & Co. v. Ranee Sharut Sundari Debia*, 7 W. R., 395.) When a jote is transferred even with the

consent of the zemindars, the transferee merely acquires a new jote on the terms on which the old tenure was held, but he is not entitled to make up his right of occupancy by adding the time during which his predecessor held it—(*Tara Prosad Roy v. Soorjo Kant Acharjee Chowdry*, 15 W. R., 152; *Ilyder Bux v. Bhubendra Deb Koonwar*, 17 W. R., 179; also 22 W. R., 22 F. B.)

See section 20 (1) and notes, *ante* pp. 105—109.

20. (4). Land held by two or more co-sharers as a raiyat holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co sharer.

This supercedes *Shaik Mahommed Chaman v. Ram Persad Bhakut*, 8 B. L. R., 338; 22 W. R., 52, note. This right may be in its inception joint with other persons, and by the death of co-sharers ultimately became a sole right without its continuous nature being affected—(*A. J. Forbes v. Ramlal Biswas*, 22 W. R., 51).

See section 20 (1) and notes, *ante*, p.

20. (5). A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

This sub-section will extend the range of section 21.

And for one year thereafter, *i. e.*, for one year after he ceases to hold any land in the village.

The holding of *any* land, however, *e. g.*, a homestead, would not make a person a settled raiyat. The holding must be as a raiyat, *i. e.*, for the purposes of cultivation. Suppose a man used to cultivate some land in a village and reside there, and suppose he throws up all his land except his homestead and does not take up any fresh land for cultivation within a year, does he still continue to be a settled raiyat? Possibly not.

20. (6). If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

In a suit by a zemindar for ejectment where the raiyat pleads a continuous occupancy for twelve years, and it is found that the raiyat was evicted during that period but got back into possession; if the eviction were wrongful, it would not be such an interruption of possession as would prevent the raiyat from acquiring a right of occupancy. But it would lie with the raiyat to show that the eviction was wrongful—(*Mahomed Gazeo Chowdry v. Noor Mahomed*, 24 W. R., 324.)

See section 20 (1) and notes.

20. (7). If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

This sub-section has been adopted at the instance of the Government of Bengal: "While, however, the Lieutenant-Governor thus agrees with one part of the definition of a settled raiyat, he desires to represent an objection to section 45 as it stands, in that it throws on the raiyat the burden of proving 12 years' occupation." This provision will in most cases cause delay and inconvenience, and in some cases must result in injustice. It is here a misfortune that Bengal is so absolutely destitute of a record of rights. If we had such a record, the position would be without difficulties, but in its absence there is much reason to fear continuous litigation to establish or disprove claims to a right of occupancy. When under the provisions of this Bill a record of rights is established, disputes will be impossible. But in the long interval before that can be accomplished, we must seek by some addition to the section to meet the difficulty, and the only way which presents itself to the Lieutenant-Governor's mind is the adoption of the principle that the fact of residence or actual occupation, which, can be readily ascertained, should afford a rebuttable presumption that the raiyat is entitled to be classed as a settled raiyat. If the presumption be unfounded, the zemindar can readily rebut it, for all the materials of proof are in his office or *sherista*. No one can doubt that in the vast majority of cases the presumption will not be rebuttable, and that the zemindars will not question it; and thus an enquiry into exceptional cases will alone be needed to secure to the country at large the peace and contentment which must attend on the well-defined *status* of the bulk of the agricultural population. On the other hand, an enquiry into the *status* of all resident cultivators will last a generation, and will lead to unrest, if not litigation, which should be avoided."—(No. 72 T.—R. of the 27th September 1883).

This provision is, however, revolutionary. Hitherto it has been always held that it is for the raiyat to prove that he has acquired an occupancy right; the presumption now lays down that the zemindar is to prove that he is not an occupancy raiyat. The presumption, however, is rebuttable. Observe, too, that it applies with reference to some particular land. Suppose the question arises with respect to a particular plot of ground, and the holder proves that he holds it as a raiyat, the presumption will arise that he has acquired a right of occupancy with reference to that particular plot. The zemindar may rebut it; and then the raiyat may fall back upon sub-section (2) and prove that, though he did not hold that particular plot of land for twelve years, he has held other lands for that period.

As to the consequence of this sub-section, See Mr. Justice Field's Minute, para. 19.

21. (1) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

Settled raiyats to have occupancy-rights.

"One of the privileges of the *khudkasht* raiyat was to hold fresh land in the same village on the same tenure as the old; and as, in those times there was a larger margin of waste in all villages, the resident cultivator had the fresh land at his door. There is now but little margin of waste in any village of the settled districts, and therefore the raiyat if he wants to add to his holding, cannot always succeed in doing so. That he should, however, if successful in his quest, (and he can only succeed with the consent of his landlord) hold such additional land in the same estate, by the same title as his original holding, is only a rational development of an old customary law of the country to suit the modern wants." (Beng. Govt. No. 972 T.—R., of the 27th September 1883.)

The force of this sub-section has been amplified by sub-section (5) of section 20. A settled raiyat acquires a plot of ground in 1884; by this sub-section he acquires a right of occupancy in it. In 1885 he surrenders all his land except the plot he acquired in 1884; under sub-section (5) of section 20 he continues to be a settled raiyat for that plot. In 1886 he acquires another piece of land under the landlord, and under this sub-section he again acquires a right of occupancy in it.

This sub-section will have a retrospective effect between March 1883 to 1st November 1885 under the following sub-section. It supersedes the decision of Amarchand Bukshree Pyekar, 22 W. R., 228, which laid down that land held as one tenure is either subject to a right of occupancy as a whole, or it is not subject to any right of occupancy as to any part of it; if within twelve years the tenant has been allowed to take possession of fresh lands, and such addition was intended to create a fresh tenure, a right of occupancy has not been acquired as regards the whole, although a portion has been held for more than twelve years.

21. (2) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree of order passed by a Court before the commencement of this Act.

The 2nd of March 1883 was the date on which the motion was made in the Legislative Council for leave to introduce The Bengal Tenancy Bill; and the object of this provision is to protect raiyats who may have been induced, while the Bill was before the Council, to contract themselves out of, or otherwise forego, rights which the Act affirms or confers. The 2nd of March 1883 corresponds to the 19th Falgun 1289 Bengali, the 9th Falgun 1290 Fasil, and the 20th Falgun 1290 Vilyuti year.

This section has a retrospective operation and should be read with section 178 *post*.

22. (1). When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy-right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

22. (2). If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

"We have in section 22 re-cast sections 28 and 29 of the Bill No. II so as to carry out more precisely the intention with which they were framed, and we have inserted a sub-section (2) providing that if the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist." (S. C. B. III.)

The original provisions about merger as proposed in the Rent Commission Bill, may throw some light upon the subject. They are as follows :—

"43. (a). When by purchase at a private or public sale, by gift, succession, or will, the proprietor of an estate becomes the owner of a tenure in such estate, such tenure shall, unless such proprietor can show that he had a contrary intention, be presumed to be merged in the proprietary interest and to be extinguished by the fact of the same person being owner of the estate and the tenure, subject, however, to the following conditions :—

Nemo potest case dominus et tenens.

- (1) Such person must be owner of the estate and the tenure in the same right and at the same time.—Kent, Vol. IV, p. 108 ; Woodfall, 281.
- (2) The presumption shall not arise in the case of a minor until he becomes of full age, or in the case of a person of unsound mind until he becomes of sound mind.—Kent, Vol. IV, p. 112.
- (3) Such merger shall not operate to the prejudice of any person having a lien upon such tenure or of any under-tenure-holder or raiyat.—Kent, Vol. IV, p. 110 and 111 ; 13 B. L. R., 198.
- (4) Subject to the provisions of the law for the time being in force relating to sales of land for arrears of Government revenue, and subject to the provisions of this Act as to sales for arrears of rent without, or in execution of, a decree, such proprietor shall have the same rights and be subject to the same liabilities which the previous holder of such tenure had or was subject to, in respect of those persons between whom and such tenure-holder the relation of landlord and tenant existed :—8 and 9 Vic., Cap. 106, section 9 :

provided that when, in the case of two or more persons being coparceners, one or more, but not all, of such persons become the owners of a tenure in such estate, no merger shall take place.

"(b.) Upon the expiry of three months from the date when such person so became owner of the estate and the tenure, such contrary intention may be proved in the following manner and not otherwise ; that is to say, by the production of a deed declaratory of such intention and duly registered within such period of three months, and by proof that a copy of such deed was published in the manner provided in sub-clauses (4) and (5) of clause (a) of section 203 for the notification therein mentioned.

"44. The provisions of section 43, so far as they are applicable, shall apply, *mutatis mutandis*, to a tenure-holder acquiring an under-tenure of the first degree ; to an under-tenure-holder of the first degree acquiring an under-tenure of the second degree ; and so on in order ; and also to a proprietor, tenure-holder or under-tenure-holder acquiring an occupancy holding, the rent of which was previously payable directly to such proprietor, tenure-holder, or under-tenure-holder.

"45. It is hereby declared to be, and to have always been, the law in the territories under the administration of the Lieutenant-Governor of Bengal that, when the Secretary of State for India in Council acquires an estate by purchase or otherwise, the proprietary interest in the land included in such estate

is merged in the paramount title of such Secretary of State, and extinguished by the fact of such proprietary interest and such paramount title meeting in the same person. The third and fourth conditions mentioned in clause (a) of section 43 shall apply to every such estate acquired by the Secretary of State for India in Council. Nothing contained in this section shall be construed as to interfere with the operation in any such estate of Act VIII of 1879 passed by the Lieutenant-Governor of Bengal in Council, or of any Act for the time being in force for the recovery of public demands.

Illustration.

An estate named Sultanpur is purchased by the Collector of Burdwan on behalf of the Secretary of State for India in Council at a sale for arrears of land revenue. A, B, and C are raiyats holding land included in this estate, and before the sale they paid certain annual sums as rent direct to the proprietor of Sultanpur. After the sale they are liable to pay the same annual sums to the Secretary of State for India in Council, and such sums are so payable not as rent, but as land revenue."

Entire interests united.—This would seem to imply that if a landlord owning a fractional share acquire a right of occupancy by transfer or otherwise his two rights will not merge. But this hypothesis is contradicted by sub-section (2), which lays down that even with respect to a fractional shareholder to whom a right of occupancy is transferred, the merger will take place.

The line of demarcation between sub-section (2), and the *Explanation*, is rather difficult to trace. They seem to be entirely contradictory.

The true interpretation of these provisions seems to be this: If a fractional owner of land acquires a subordinate occupancy-right by transfer or otherwise, the subordinate interest, *i. e.*, the occupancy-right, ceases to exist (sub-section 2). But if a raiyat having a right of occupancy acquires a superior but fractional interest in the land, as proprietor or permanent tenure-holder, the subordinate right, *i. e.*, occupancy right, will not cease to exist, *i. e.*, it will live (*Explanation*). But if the same raiyat acquires an entire superior interest in the land as proprietor or permanent tenure-holder, the subordinate interest, *i. e.*, the occupancy-right, will cease to exist (sub-section 1). Hence when the entire interests of the superior landlord and the occupancy raiyat are united, whether the landlord purchases the subordinate interest, or *vice versa*, *i. e.*, the raiyat purchases the superior interest, they fare in the same boat. But when a fractional owner purchases a right of occupancy, the subordinate interest is merged in the superior interest. This, however, does not hold good in the converse case, *e. g.*, if the occupancy raiyat purchases that fractional share. This is hardly just to the zemindars. A fractional owner *plus* the occupancy raiyat is the same as an occupancy raiyat *plus* the fractional owner.

'Ceases to exist' possibly means, is extinguished.

'Does not lose it' means, is not extinguished or remains in abeyance.

Jointly interested.—Jointly interested with whom? In sub-section (2), this phrase certainly refers to fractional owners, *i. e.*, jointly interested with other proprietors. If it meant jointly interested with the occupancy raiyat, the sub-section would have been superfluous in face of sub-section (1). The same meaning I presume, holds good in the *Explanation*.

There is another distinction which ought to be marked. Sub-section (1) speaks of becoming united "by transfer, succession; or otherwise." So the

Explanation speaks of becoming "interested," (how, it does not say,—it may be by transfer, succession, or otherwise); but sub-section (2) speaks of being "transferred" only. Hence if an occupancy-right is bequeathed to a fractional owner, this provision will not apply, and the occupancy right will live in the co-sharer. See the definition of the word 'transfer' under the Transfer of Property Act, p. 82.

Sections 28 and 29 of the Bengal Tenancy Bill No. II were more explicit. They ran as follows:—

"28. If the landlord of a raiyat having a right of occupancy acquires, by purchase or otherwise, the interest of the raiyat, the occupancy-right shall cease to exist, but nothing in this section shall prejudicially affect the rights of any third person."

29. (1) A person holding land as a raiyat shall not be prevented from acquiring an occupancy right in the land by reason only that he is jointly interested in the land as proprietor or tenant-holder.

(2) A person holding as an ijaradar or farmer of rents shall not by such holding acquire a right of occupancy in the land, but if a person acquires a right of occupancy in land he shall not lose it by subsequently holding the land in farm."

In recasting these sections the Select Committee have made them more confused. The *Explanation* cannot be, or ought not to be, treated as a separate sub-section. It is only an explanation of the main sub-sections of the Act. Looked at from this standpoint of view, it would appear that sub-section (1) applies to both occupancy raiyats and landlords whoever purchases the one or other right in the case of a transfer of the entire interest. So does sub-section (2) by straining the meaning of the words used in it. Whether the occupancy right is added to the fractional superior right or *vice versa*, the effect is the same. Hence equitably considered sub-section (2) should be held to apply to both cases equally. The *Explanation* then adds that in either of the three cases contemplated by sub-sections (1), (2) and (3), when the occupancy raiyat becomes subsequently interested in the superior right, the occupancy-right is not lost by it, but is kept in abeyance. This, it will be remembered, is only another and a strained explanation of the section. The whole difficulty vanishes if we suppose that the words "by subsequently becoming jointly interested in the land as proprietor or permanent tenant-holder," have inadvertently crept in.

Case law.—For the case law on the point, see section 20 (1) and notes *ante*, pp. 103—109.

A person held raiyati lands alternately as cultivator and ticca lessee or farmer continuously for a period of about fifty years. In special appeal it was urged that when the defendant took the lease, his possession as cultivator merged in that of the higher title, and that, though he had cultivated the lands for broken periods, yet that would give him no right of occupancy, as he had not held the lands continuously as a cultivator for a period of twelve years. "We think," says Loch, J., in this case, "the doctrine of merger does not apply to this case, for the defendant, notwithstanding the leases, continued to hold the lands, as he always had done previously, *viz.*, as a cultivator. We do not mean to say that the defendant as lessee could confirm his own right of occupancy. But we think that, during the period of the lease, the power of eviction as regards him was in suspense, and when the lease expired, he was still, as he had always been, the actual cultivator." Ainalie, J., observes: "The lands in the present case are raiyati lands. They were subject to the accrual of some right in the raiyat other

than that derived from express grant by his landlord; and it seems to me that such rights do not merge in the ticca leases takou from the zemindar. It has been nowhere proved that in the intervals between the ticca leases, the defendant entered into possession under a new arrangement with the zemindar. He appears to have continued in possession as a matter of course, and on the expiry of each ticca lease to have resumed without any question the position he was holding at its commencement. No doubt the defendant as farmer could not, by his own neglect to exercise the powers of the landlord, create for himself any title as raiyat against the zemindar. But on the other hand, he lost no title or interest that he had as a raiyat. If his raiyati interest be taken as suspended during the whole period of the existence of the leases, we still find that he has been holding for a period of 21 years, and that in the whole term of 47 years, commencing in 1231 F. S., his occupation has never been interrupted by the holding of any other raiyat"—(*Mokoondi Lal Dobe v. L. G. Crowley*, 17 W. R., 274.) In *Thomas Savi v. Panchanan Roy and others*, 25 W. R., 503, the lower Courts found as a fact that the defendant's tenancy commenced in 1269, and that from 1272 to 1278 he was assignee of the landlord's interest under an ijara lease for six years. At the end of 1278 he did not quietly surrender the leased property as stipulated, and consequently a notice to quit was served upon him in 1279. The Court (Ainslie and Birch, JJ.) observed: "It seems to us that the defendant must be taken to have been holding over as farmer for this last year, so that he was in fact assignee of the landlord's interest up to the end of Assin 1279. He was therefore the person who had the power to terminate the raiyat holding by virtue of which he now claims, and so long as he remained as middleman, the landlord could not come in to deal directly with the raiyats. It is through his own forbearance that the present claim has grown up, and there can be no equity in allowing him to stand by idle in order to create a right in himself adverse to his landlord whose interest he as farmer was bound to protect. Granting that a raiyati interest may consist with a farming title, I think it must be held that the co-existing raiyati interest is the same in extent and quality at the end as at the beginning of the lease of the farm. Whatever may be the case as to other tenants as against the farmer himself, the lessor has a clear right to have compensation for any change to his prejudice caused by him (the farmer), and this not merely by way of damages, but by having the property restored to its original estate where this is practicable. Thus if the defendant had no right of occupancy at the commencement of his farming lease, he cannot have acquired one during its currency. This view of the law was taken by Mr. Justice Loch and myself in the case of *Mookundilal Dobe v. Crowley*, 8 B. L. R., App. 95. This view may lead to some difficult questions, but their solution is unnecessary in the present case, for it is only by continuing the raiyati interest to the very last day on which the farming title continued to exist that an occupation of twelve years is made out. Baboo Mohini Mohan Roy contended that under section 6, Act VIII of 1869 (B.C.), the right of occupancy is not limited by any proviso, save that mentioned in section 7, but that it comes into effect absolutely the moment 12 years' continuous possession as a raiyat has been completed. But then the question is, what is meant by occupation as a raiyat? I, in effect, held in the case cited, and still hold, that it means an occupation which, though subordinate, is in a sense adverse to the landlord so far as it qualified his power of dealing with the land at will. Where there is practically no restraint of the landlord's will, in consequence of the will and the restraining power being in the same person, there can be no opposition (in the qualified sense intended above) to the landlord such as is inherent in the holding of a raiyat; and while this state of things lasts, the raiyati right is so far in abeyance that it cannot undergo any change in its

character." See the decision of *Lal Bahadur v. E. Solano*, I. L. R. 10 Cal. 45; 12 C. L. R., 559, quoted in full under section 20 (1), *ante*, p. 104.

The right of occupancy is a right given to a raiyat continuing only so long as the raiyat pays rent for the land he holds, and though it cannot be affected by a wrongful eviction, still when the zamindar acquires the land by purchase and takes possession, even in the *benami* name of a third party, seeing that he cannot pay rent to himself, the right is gone and cannot subsequently be revived.—(*Radha Govind v. Rakhal Das*, I. L. R. 12 Cal., 82.)

22. (3) A person holding land as an *ijaradar* or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his *ijara* or farm.

A possession which amounts simply to a *moostagiri* right to collect rents from raiyats is not such a possession as confers a right of occupancy—(*Lalla Ishur Dutt v. Bhuka Chowdry*, 17 W. R., 242.) A *ticcadar* occupying merely as the assignee of the zamindar, and cultivating because of the opportunity thus afforded, cannot, under colour of that character, claim the right of occupancy under section 6, Act X—(*Wooma Nath v. Koondun Tewari*, 19 W. R., 177; *Ram Suran v. Veryag Mahaton*, 25 W. R., 554; *D. M. Gilmore v. Sreemunt Bhoomik*, Sp. W. R., (Act X), 77; *Watson v. Koer Jogiudra*, 1 W. R., 76; *Mookundo Lal v. Crowdy*, 17 W. R., 274; *Savi v. Panchanun*, 25 W. R., 503; *Jaidine Skinner v. Ram Shurut Sunduri*, 3 C. L. R., 140; *Rai Kamul Dasi v. Laidley*, I. L. R., 4 Cal., 957 and *Lal Bahadur Sing v. Solano*, I. L. R., 10 Cal., 45. See these decisions discussed at length *ante*, pp. 104–109.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in *ijara* or farm.

See section 20 (1) notes, *ante*, p. 104, and section 22 (1) (2) notes, *ante*, pp. 120–121, and section 22 (3) notes.

Summary.—The effect of these provisions may be summed up thus :

1. If the immediate landlord, being the sole proprietor or the sole permanent tenure-holder acquires a right of occupancy by transfer, succession or otherwise, a merger takes place and the occupancy right is extinguished.

2. If the immediate landlord, being a fractional proprietor or permanent tenure-holder acquires a right of occupancy by *transfer*, a merger takes place, and the occupancy right is extinguished.

3. If the immediate landlord, being a fractional proprietor or permanent tenure-holder acquires an occupancy right by succession or otherwise than *transfer*, there is no merger, and the occupancy right lives.

4. If an occupancy raiyat acquires the entire interest of the immediate landlord or permanent tenure-holder, there is a merger and the occupancy right is extinguished :

5. If an occupancy raiyat acquires only a share of the immediate landlord's interest, he being neither a proprietor or permanent tenure-holder, no merger takes place, and the right of occupancy lives.

6. If the superior and inferior interests unite together, when the superior interest is that of a person who is not a permanent tenure-holder, or who is a farmer or *ijaradar*, no merger takes place and the two rights live distinctly apart from each other, no matter how the union took place.

7. During the term of an *ijara* or farm, the raiyati right, whether an inchoate occupancy right or a complete right of occupancy, remains in abeyance.

Incidents of Occupancy Right.

"Turning now to the incidents attached to the right of occupancy, it will be seen that we have made a most important change in regard to one of those incidents—transferability. Instead of legalising it and regulating it by law, we have left it everywhere to custom."—(S. C. B. III).

The following sections (23—26) give what the incidents of an occupancy right are, but they do not include transferability or sub-letting. Transferability, however, is not expressly proscribed; on the contrary it is recognized when custom allows it (see sections 178 (3) and 183); and sub-letting is legalised by section 85. The following, however, is a brief account of the case law on the subject of transferability of an occupancy right.

Transferability of the occupancy right.—The original scheme was to make the right transferable, but it has been abandoned on account of the many difficult questions that arose out of it. The old Acts (X of 1859, or VIII of 1869 (B. C.) did not define a right of occupancy: They simply provided that the raiyat holding for the prescribed period "shall have a right of occupancy in the land, so long as he pays the rent." The right was not expressed to be heritable, but it was provided that "the holding of the father or other person from whom a raiyat inherits shall be deemed to be the holding of the raiyat within the meaning of this section." That provision only referred to the acquisition of the right—(Nim Chand Borua v. Moorari Mundle, 8 W. R., 127), and the right when acquired was nowhere declared to be heritable; and the literal meaning of the terms used would not necessarily include an hereditary quality in the right. Moreover the right being one created by statute, although analogous in some respects to the right of the *khudkasht*, its nature cannot be ascertained by a reference to the rights of the *khudkasht* or to custom. Occupancy tenants may of course have customary or other rights in addition, but it is difficult to see how these can assist in determining their rights as occupancy raiyats. Apparently the strict terms in which the right is bestowed would be satisfied by giving the raiyat a

personal right neither hereditary nor transferable. **Under the old law** Ac- doubted, if heritable. cordingly Sir Barnes Peacock in one case doubted whether a right of occupancy was heritable—(Ajodhya Persad v. Musst. Emam Bandee, F.B., 7 W. R., 528; B. L. R., Sup. Vol. 725, S. C.; 2 Ind. Jurist, 192. See also Rani Durga Sundari v. Brindavan Chundra Sarkar, 2 B. L. R., App., 37; 11 W. R., 162.) Sections 20 and 21 of this Act now attempt to define a settled

The new law makes it raiyat, and section 26 makes the right expressly heritable. heritable. Where a raiyat succeeded to the holding of his uncle, who had a right of occupancy, and was allowed by the zemindar to continue in the holding for eleven years, it was held that though the plaintiff was not strictly entitled to succeed by inheritance, yet he must be taken to have succeeded to the holding by the consent of the zemindar and acquired a right of occupancy—(Musst. Hakeemunnessa v. Bhooria, 5 All. 23.) A distant relation of a deceased raiyat was under the old law not entitled to succeed by inheritance when the zemindar had, on the death of the raiyat, made arrangements with another raiyat—(Jotee Ram Sarma v. Mungloo Sarma, 8 W. R., 60.) This decision in fact goes to establish what we have stated above that the right when acquired was nowhere mentioned in the old law to be heritable. Section 26 of the new Act, however, settles the whole question. The right of occu-

pancy is necessarily acquired by holding upon a tenure which is either hereditary and transferable or not; and at one time it was a question whether a right to occupy,

Conflict of decisions as to transferability of the right.

and not to be ejected so long as the rent is paid, is added to the rights already existing, so that it becomes part of the tenure, and goes with it, being transferable when the original tenure was so. It has been held that the acquisition of an occupancy-right would not render a tenure transferable which before was not so. It was not the intention of the Legislature, when passing Act X of 1859, to alter the nature of a jote and convert a non-transferable jote into a transferable one, merely because a raiyat had held it for twelve years, and thereby acquired a right of occupancy—(*Ajodhya Persad v. Musst. Imam Bandee Begum*, 7 W. R., 528 (F. B.). To the same effect is *Rani Durga Sundari v. Brindavan Chandra Sarkar*, 2 B. L. R., App., 37; 11 W. R., 162.) On the other hand it has been said that a right of occupancy is perpetual, transferable and heritable—(*Musst. Taramani Dasi v. Bireswar Mazumdar*, 1 W. R., 86; *Nunka Roy v. Mahabir Persad*, 3 B. L. R., App. 35; 11 W. R., 405.) This view has been over-ruled in later cases, and the right has been decided not to be transferable. A raiyat's right of occupancy resting upon legislation and custom alone is not derived from the general proprietary right given to the zemindar by the Legislature, but derogates from and qualifies that right. Whatever the raiyat has, the zemindar has all the rest which is necessary to complete ownership of the land; and, amongst other rights, he must have such a right as will enable him to keep possession of the soil in those persons who are entitled to it. The raiyats have no power to transfer their right to have possession of, and to use the soil, for their own benefit—(*Bibi Sohodwa v. Smith*, 12 B. L. R., 82; 20 W. R., 139.) In other cases the transferability appears to have been decided with reference to the original nature of the holding. Thus it has been laid down that a *khud-kasht* raiyat with a right of occupancy may transfer if there is a custom authorizing such transfer; that is, if his original holding was transferable, since at the date of this decision there could be no custom which would affect the new right of occupancy created by Act X of 1859—(*Chandra Kumar Roy v. Kedaramani Dasi*, 7 W. R., 247; *Narendra Narain Chowdry v. Ishan Chandra Sen*, 13 B. L. R., 274.) In several other cases the same test of transferability is applied or referred to, namely, the original nature of the tenure—(*Juggut Chander Roy v. Ramnarain Bhattacharjee*, 1 W. R., 126; *Unnopurna Dasi v. Ooma Churan Das*, 18 W. R., 55; *Sreeram Bose v. Bissonath Ghose*, 3 W. R., Act X, 3.) And in most of the cases in which a right of occupancy was decided not to be transferable, the original tenure was not transferable, and Sir Barnes Peacock said in the Full Bench case of *Ajodhya Persad v. Musst. Imam Bandee Begum*, 7 W.

Question settled by a Full Bench.—Not transferable, *ipso facto*.

R., 528, that it was not intended to alter the nature of the jote by giving the right of occupancy. It has been now decided by a Full Bench of the High Court of Calcutta that the statutory right of occupancy is not transferable as such. This decision is grounded upon the personal nature of the right. Thus Chief Justice Couch says: "It is a right to be enjoyed only by the person who holds or cultivates and pays the rent, and has done so for a period of twelve years." And again: "The ordinary construction of the words (in section 6) appears to me to be that the right is only to be in the person who has occupied for twelve years, and it was not intended to give any right of property which could be transferred. The question, as I have answered, is solely upon the Act, and independent of the existence of any custom"—(*Narendra Narain Roy Chowdry v. Ishan Chandra Sen*, 13 B. L. R., 274 at p. 288; 22 W. R., 22.) This view is more fully developed in the following extract from the judgment of Mr. Justice Phear in the case of *Bibi Sohodwa v. Smith*, 20 W. R., 139: "As the authorities stand, this question seems to be one of some nicety, and in considering it there is need to bear in mind that the relations between the zemindar and the raiyat are not generally the same

as those between the English landlord and tenant. No doubt the zemindar has been made by legislative enactment the proprietor of the land which forms his zemindari, and as regards his *khamar*, *neej-jote* or *seer* land, it may be taken that the cultivator of the soil has generally no other rights than those which he obtains as a tenant by contract with the zemindar, but with regard to the raiyati lands which constitute the bulk of his zemindari, it is much otherwise. Then, while the zemindar is still the proprietor of the land, the raiyats of the village, as the combined effect of custom and legislation, have in most, if not in all cases some right to cultivate the raiyati land of the village, which is altogether independent of the zemindar, and which, in the case of a raiyat having a right of occupancy, is a right to occupy and use the soil, quite irrespective of any assent or permission on the part of the zemindar. This right resting upon legislation and custom alone, is not derived from the general proprietary right given to the zemindar by the Legislature, but is, as I understand, in derogation of, and has the effect of cutting down and qualifying that right. I may say that, in my conception of the matter, the relation between the zemindar's right and the occupancy raiyat's right is pretty much the same as that which obtains between the right of ownership of land in England, and the servitude or easement which is termed *profit a prendre*, although I need hardly say the raiyat's interest is greatly more extensive than a *profit a prendre*. It appears to me that the raiyat's is the dominant and the zemindar's the servient right. Whatever the raiyat has, the zemindar has all the rest which is necessary to complete ownership of the land: the zemindar's right amounts to the complete ownership of the land subject to the occupancy raiyat's right, and the right of the village, if any, to the occupation and cultivation of the soil, to whatever extent these rights may in any given case reach. When these rights are ascertained there must remain to the zemindar all rights and privileges of ownership which are not inconsistent with or obstructive of them. And amongst other rights, it seems to me clear that he must have such a right as will enable him to keep the possession of the soil in those persons who are entitled to it, and to prevent it from being invaded by those who are not entitled to it"—See Regulation VII of 1799, section 15, clause 7. It was held in an early case that the customary right to occupy as long as the raiyat paid the customary or agreed rent could not be transferred, and the zemindar was held entitled to possession as against the transferee—(Baboo Prasanno Kumar Tagore v. Ram Mohun Dass, S. D. A. (1855), 14, referring to Harington's Analysis, Vol. III, 434, 465.) The right dealt with in this case may be the right of the *khudkasht*, or an analogous right which has grown up out of mere occupancy. The right of occupancy acquired by a cultivating raiyat under section 6 of the Bengal Act, VIII of 1869, cannot be transferred either by a voluntary sale, or gift, or by a sale in execution of a decree—(Dwarkanath Misser v. Hurish Chunder 4 I. L. R., Cal., 925.)

"As regards the mode of transfer," says Jackson, J., "it is clear there is no

The mode of transfer ground for distinguishing a voluntary sale from a sale in execution. If a sale by a private contract would make no difference. validly pass a right of occupancy, then a sale in execution of a decree would equally pass it and *vice versa*. So far then I think the case is clearly governed by the authority of the Full Bench ruling." The sale of a jote in execution of a decree against the jotedar does not prove it to be transferable, nor does the purchaser acquire a right of occupancy by his purchase where the right is not dependent on custom, but is a mere creature of the Rent Law—(Kripanath v. Doyal Chand, 22 W. R., 169; Ram Chunder v. Bhola Nath, 22 W. R., 200; Sheik Ameen Buksh v. Bhyro Mundle, 22 W. R., 493; Mrs. M. R. Hyes v. Munshi Moneeruddin, 24 W. R., 6; see also 25 W. R., 104; Nakoo

Roy v. Mahabir Persad, 11 W. R., 405; Tara Prosad v. Soorjo Kanta Acharjee, 15 W. R., 152; Dwarika Nath v. Kanaye Sirdar, 16 W. R., 111; Bootee Sing v. Moorat Sing, 20 W. R., 478.) But see sections 65 and 108 *post*.

But the right of occupancy where custom allows it. See sections 178 (3) and 183; (see also Joykishen v. Rajkishen transferable by custom. 1 W. R. 153 (3 R. J. P. J., 224; Sriram Bose v. Bissonath Ghose, 3 W. R. (Act X) 21.) As a general rule it has been laid down by the judgment of a Full Bench that when a tenure was not transferable before the passing of Act X, the passing of that Act would not have the effect of rendering it a transferable tenure; but that ruling specially exempts cases in which rights of occupancy or tenures of a similar description were transferable by local custom. It has never been ruled that under no circumstance can a right of occupancy be transferred—(Nukoo Roy v. Mahabir Persad, 11 W. R., 405.) In the Full Bench case of Narendro Narain Chowdry v. Ishan Chundra Sen, Couch, C. J., observes: "The question, as I have answered, is solely upon the Act, and independent of the existence of any custom." But in order to make a right of occupancy transferable, it must be shown that it is so transferable according to the custom of that part of the country in which the tenure is situated; where no mention is made in a *dowl* of any right to transfer, the existence of the power to transfer cannot be presumed—(Unnopurna v. Oma Churn, 18 W. R., 55; Musst. Shunkerputee v. Mirza Saifoolla, 18 W. R., 507; Bootee Sing v. Moorat Sing, 20 W. R., 478.) In Joykishen v. Rajkishen, 1 W. R. 153, the Court observed: "In every district of Bengal there is a different custom, and this question (whether the tenure is transferable by custom) can only be decided by reference to local custom. What is the custom in Lower Bengal is not so on the eastern and the northern parts, and *vice versa*. In some parts the *khudkast* tenants are allowed to sell without reference to their landlord; in other parts the practice has not been allowed: and the only method by which the question in each case can be decided, is by reference to local custom and not by the evidence of a few antagonistic witnesses. We therefore remand the case to the Judge for the purpose of a local investigation, made with regard to the custom that prevails in that part of the district in which these lands are situate." In Chunder Kumar v. Peary Lall, 6 W. R. 190, the Court (Travor and Campbell, JJ.) remarked: "The Judge has held as a fact that the custom of Hooghly does not sanction the transfer of *khoodkast-jotes*. That point has not been brought before us, and as the fact depends upon evidence we cannot interfere in special appeal. We think it right to say, however, that a custom of this nature need not be absolutely invariable; it can be proved by evidence amounting to much less than this. Moreover the case which the Judge cites from the Sudder Reports refers to Moorsshedabad and not to Hooghly, and therefore can be no authority for proving a custom in the former district." So in Joy Kishen v. Doorga Narain, 11 W. R., 348, the Court said: "It has been found in evidence that jummas such as the one held by the defendants Nos. 3 and 4 are, by custom of this particular village, transferable; there was no necessity for the witnesses to fix any particular time from which such tenures became transferable from one party to the other. It was sufficient that there was evidence, which the Principal Sadar Amin has credited, of the antiquity of the custom (and this evidence, we may remark, he has given very cogent reasons for crediting) to establish the fact that there is at present the custom referred to and that no evidence to the contrary was adduced. It seems to us that this was legally sufficient evidence, and that we have no power to interfere in special appeal." But the custom must be a custom that sales are effected in spite of the landlord, and proofs of instances of sale must be such

that the sales took place without the consent of the zemindar and still held good. In *Bibi Sahodra v. Mr. Maxwell Smith*, 20 W. R., 139, Phear, J., observed: "The Judge says, that he arrives at the conclusion that the transfers from the raiyats to the defendant upon which the defendant relies are proved; and also that these raiyats had tenures which they were capable of transferring. But it appears very clear that in dealing with the evidence, the Lower Appellate Court very seriously misapprehended the force of a considerable portion of it. We refer to the evidence of sales held in execution of decrees, the evidence consisting partly of parol testimony, and partly we believe of certificates of sales. But in all these instances of sales, so far as they have been brought to our notice, the sales were sales in execution effected at the instance of the zemindar himself; and consequently they could not be evidence of the right on the part of the raiyats to transfer without the assent of the zemindar." So in *Bootee Sing v. Moorat Sing*, 20 W. R., 478, Phear, J. remarked: "Both the first Court and the Lower Appellate Court were agreed in thinking that the defendants Nos. 1 and 2 had failed in proving that they had an old *gorabandi* right to their jote; but the Lower Appellate Court, upon the evidence which it refers to, was of opinion that these defendants had gained a right of occupancy under the rent law, and that such a right of occupancy was in their village and in their neighbourhood recognised as a transferable right, irrespective of the will of the zemindar. It seems to us more than doubtful whether any evidence could establish that a bare right of occupancy under the Act was transferable irrespective of the will of the zemindar. But however this may be, we are quite clear that the evidence upon which the Subordinate Judge bases his opinion is insufficient for that purpose. All the transfers to which he refers are in terms transfers of a *gorabandi* right; therefore the subject which was transferred by them was something very different from the bare occupancy right to this land, which was all that the Subordinate Judge found to be the right of the first two defendants. This being so, we think the Subordinate Judge was wrong in holding that the transfer of the land in question from the first two defendants to the defendants of the second party was valid against the zemindar." The custom must be clear and well defined:—(*Dwarkanath v. Harish Chunder*, I. L. R. 4 Cal. 925).

There is nothing unreasonable in the custom by which the tenure of *khud-kasht* raiyat, who has built a pucca house on his land and has acquired a right of occupancy under section 6, Act X, is a transferable tenure—(*Chunder Kumar Roy v. Kedar Mani Dasi*, 7 W. R., 247.) According to the custom of the Hoogly district, a tenure granted for building purposes is transferable—(*Bance Madhub v. Joykishen*, 12 W. R., 595, which confirm the opinion of the senior judge, Kemp, J., in the same case reported in 11 W. R., 354; compare also *Doorga Persad v. Bindavan*, 15 W. R., 274; *Nidhi Kristo v. Nistarini*, 21 W. R., 386.) A *kadimi* or *mourasi* holding is something very much larger than what is known as a right of occupancy under the rent law; and where, according to the custom of the country, such a holding is a transferable tenure, the purchaser takes the whole of the rights of the previous holder against the zemindar—(*Nunda Kumar v. Lakshmi Pris*, 23 W. R., 36.) The existence of a custom in a particular district, however, by which a right of occupancy in such a district is transferable, will not justify the holder of such right in subdividing his tenure, and transferring different parts of it to different persons; and in case of such transfer, the zemindar is entitled to treat the transferees as trespassers, and eject them—(*Tirthanud Thakoor v. Mutty Lal Misser*, I. L. R. 3 Cal. 774.)

The following statistics of private sales of occupancy rights were cited by Statistics of local the Bengal Government from the Appendix to the published Report on the Registration Department in Bengal custom.
1881-82.

Statement showing the number and value of Ryotti holdings transferred by registered deeds of sale in each Registration District of the Lower Provinces of the Bengal Presidency for the year 1881-82.

RYOTTI HOLDINGS AT FIXED RATES.									
DISTRICTS.	Number of transactions.	PURCHASERS.					Annual rent payable to land-lord.	Purchase-money.	Number of years' purchase.
		Mahajans, traders, or money-lenders.	Zemindars.		Ryots.	Others, including unspecialised.			
			Landlord of the holding transferred.	Zemindar or land-lord of holding other than that transferred.					
1	1a	2	3	4	5	6	7	8	9
Bengal.									
Burdwan	1,107	182	35	67	350	439	10,188 5 0	1,06,833	10'4
Bankura	1,348	417	17	53	605	287	10,755 9 4	1,27,816	11'8
Besbhoom	390	28	5	14	269	80	2,400 0 0	30,703	12'7
Midnapore	1,207	550	13	36	467	262	8,653 10 1	94,806	10'9
Hooghly	445	85	12	13	178	165	4,070 3 0	31,017	7'6
Howrah	850	238	10	40	142	411	10,610 0 0	3,03,313	22'5
24 Pargunnahs	1,657	230	29	106	854	1,004	37,151 10 10	2,44,858	6'5
Nudda	894	236	19	63	335	243	14,700 7 8	84,480	5'7
Jessore	1,823	102	23	56	1,233	450	25,248 0 0	1,27,445	5
Moorshedabad	753	92	35	51	308	233	5,055 6 8	51,336	10'1
Dinapore	258	11	1	2	227	17	2,129 6 0	28,405	13'3
Rajahmundry	60	16	2	7	22	24	979 7 1	11,063	11'3
Bangalore	330	17	90	9	190	11	3,721 13 7	34,179	9'1
Bogra	9	2	...	2	5	...	223 0 0	3,067	18'7
Patna	207	50	1	27	70	54	1,771 0 0	18,259	16'3
Darjeeling	5	...	...	2	3	...	167 0 0	125	...
Jalpaigore	130	23	3	29	48	38	640 6 10	22,472	5'1
Dacca	197	8	8	35	125	53	1,614 0 0	13,923	7'4
Faridkot	1,904	161	11	190	1,000	698	38,523 4 10	1,36,159	8'3
Buckergunge	167	20	8	42	75	37	792 4 10	18,834	23'7
Mymensingh	140	27	7	20	138	31	1,515 2 0	11,622	7'6
Tipperah	614	40	16	43	112	417	2,985 1 1	34,968	11'2
Chittagong	946	73	24	485	164	505	9,710 0 0	68,082	6'8
Noakhali									
Behar.									
Patna	80	3	8	42	36	2	1,369 4 3	16,835	12'3
Gya	19	4	6	2	7	2	171 1 6	2,597	15'3
Shahabad	639	41	00	80	500	36	7,061 6 2	3,06,388	4'3
Meerut	23	1	25	2	0	1	175 12 3	3,741	21'3
Darbhanga	97	4	3	29	40	15	823 12 9	8,706	10'5
Baran	162	12	2	17	119	17	980 7 0	16,620	16'9
Champaran	42	17	...	4	21	...	199 2 1	3,603	18'1
Monghyr	242	49	31	41	107	28	3,783 10 10	37,691	9'9
Rasulpore	133	25	16	3	57	32	1,525 9 0	10,527	6'9
Purnea	3	2	...	1	...	...	185 2 3	394	2'1
Madia	60	34	...	2	7	23	1,895 7 4	8,577	8'8
Samtial Pargunnahs	371	103	12	6	254	...	2,752 0 0	24,166	8'8
Orissa.									
Cuttack	97	18	6	14	19	30	456 3 7	9,020	19'8
Poore	332	27	...	61	97	55	768 15 10	14,801	19'3
Balasore	53	17	...	4	19	15	229 9 8	2,753	11'6
Chota Nagpur.									
Manikpur	7	5	...	...	3	...	1,300 11 6	3,924	4
Deoghar	9	3	2	...	5	1	158 4 0	1,369	11'3
Manikpur .....	...	...	...	...	...	...	...	...	...
Manikpur	98	14	...	2	84	17	508 6 0	11,567	22'7
Grand TOTAL ..	17,539	2,397	550	1,714	8,380	5,740	2,17,739 10 7	20,82,000	7'2

Statement showing the number and value of Ryotti holdings transferred by registered deeds of sale in each Registration District of the Lower Provinces of the Bengal Presidency for the year 1881-82.

• RYOTTI HOLDINGS WITH RIGHT OF OCCUPANCY.

Number of transactions.	PURCHASERS.				Others, including unspect- fied.	Annual rent payable to land- lord.	Purchase-money.	Number of years' purchase
	Mahajans, traders, or mo- ney-lenders.	Zemindar.		Ryots.				
		Landlord of the holding trans- ferred.	Zemindar or land- lord of holding other than that transferred					
1a	2	3	4	5	6	7	8	9
2,301	329	23	43	1,432	512	17,250 1 0	1,66,422	9 6
807	240	7	25	473	162	6,384 13 0	53,990	8 4
1,807	141	18	54	1,340	154	13,581 0 0	95,055	6 9
4,514	1,692	72	57	1,901	698	22,937 6 10	2,69,323	11 7
1,239	306	17	52	475	514	19,120 0 4	1,25,010	6 3
330	68	3	12	146	105	5,217 0 0	28,256	5 4
797	93	28	40	421	321	14,868 10 0	2,23,613	15 2
553	170	16	17	198	132	7,672 0 6	40,204	5 2
1,319	121	19	39	808	375	75,015 0 0	69,259	4 4
907	119	23	31	482	250	6,241 13 1	51,225	8 2
1,202	57	4	14	978	149	10,550 0 0	1,25,410	11 6
147	32	3	4	59	49	2,115 8 0	10,579	5
2,285	77	60	123	2,027	54	25,183 9 9	1,75,825	6 9
316	77	.....	84	193	22	2,599 0 0	17,526	6 7
364	47	7	47	214	60	2,132 0 0	21,311	9 9
.....
4	.....	.....	1	2	1	22 7 0	448	20 3
1,242	79	27	61	951	166	4,408 4 7	79,429	15 9
990	30	.....	30	706	242	4,024 0 0	41,093	8 3
121	11	.....	35	63	41	1,658 0 9	8,361	5
649	65	25	77	721	138	4,008 11 9	56,588	14 1
3,046	82	7	46	2,392	716	14,329 15 0	1,31,817	9 1
108	5	.....	8	18	60	864 12 0	9,372	10 8
460	34	31	153	316	65	5,425 0 0	22,931	4 2
.....
82	1	11	19	41	12	795 4 7	14,264	17 9
79	6	13	8	42	19	109 2 0	5,797	53
10	5	.....	3	3	.....	257 15 0	2,479	9 6
491	61	32	137	217	25	3,910 8 8	69,685	17 7
89	16	21	21	33	5	678 8 3	7,085	10 4
59	4	.....	11	48	14	499 5 6	8,608	17 4
61	13	2	2	30	5	138 2 9	5,128	37 1
197	46	4	47	92	20	2,275 9 2	29,591	9
197	36	7	5	127	22	1,905 1 7	15,313	7 7
.....
889	138	4	16	733	55	7,628 14 4	69,327	9
1,288	72	1	3	1,204	8	2,359 3 4	85,194	36
2,982	986	16	35	1,837	131	21,516 0 0	1,56,350	7 2
.....
7	1	1	1	1	3	9 14 1	233	23 6
467	108	.....	49	248	100	1,440 6 1	37,923	26 3
20	5	1	3	16	4	47 7 0	747	15 8
.....
11	9	.....	.....	5	1	350 10 9	2,489	7 1
21	10	2	2	7	1	54 12 8	3,718	67 9
3	.....	.....	.....	.....	2	24 10 0	144	10 2
216	9	7	2	164	41	1,525 2 0	13,099	8 5
32,633	5,351	558	1,472	21,903	5,529	2,53,200 12 5	23,30,168	9 2

The Lieutenant-Governor then argued:

"These statistics prove that not only in every district of Behar, but in every district of these Provinces (except Darjeeling, where altogether exceptional conditions prevail) occupancy rights are now more or less freely sold as a matter of private agreement without objection on the landlord's part, and we know from independent evidence that many of the districts in which the custom seems most firmly established are those in which ryots are best off. It is true that about 16 per cent. of the purchasers of occupancy rights are mahajuns; and this is a fact which has created misgivings as to the ultimate effect of formally recognizing the transferable character of occupancy rights. That is a danger, however, for which it is believed some provision has been made in the earlier portions of this letter, and with which I am to deal at greater length further on. Here I am to observe that it is now quite too late for landlords to object to a custom which already seems, without any opposition on their part, to have taken root in the agrarian economy of the Province.

"Although, however, landlords may be out of court in their objections to the recognition of the freedom of sale of occupancy rights, this question remains—Is it desirable to give to the custom generally the formal sanction of the law, and if not generally, then to what extent? The Lieutenant-Governor has no doubt whatever that the law may recognize free sale throughout Bengal, and if he had doubts on the question as it affects Behar, those doubts would have been removed by the unanimity of impartial local opinion in favour of the proposal, and by the evidence afforded not only by the Registration statistics referred to above, but by the following figured statement of the extent to which occupancy rights in Behar were sold during the last three years in execution of decrees in the various Civil Courts:—

Sales of occupancy holdings in the districts of the Patna Division, in execution of decrees, during the years 1881, 1882, and 1883.

DISTRICT.	1880.		1881.		1882.	
	Number of holdings	Selling price.	Number of holdings.	Selling price.	Number of holdings.	Selling price.
		Rs.		Rs.		Rs.
Patna	72	9,627	71	7,067	97	14,456
Gya	92	8,076	32	1,209	87	4,975
Shahabad	696*	11,948	924*	23,933	1,173*	10,723
Saran	217	3,610	291	3,150	460	13,995
Chumpanan	132	2,118	145	2,310	141	2,559
Darbhanga	843	13,403	1,628	15,296	1,093	23,406
Muzaffarpore						
Total ..	2,082	49,180	3,091	53,555	3,023	68,583

"It may be added that in the Monghyr and Bhagulpore districts, which, though not portion of the Patna Division, are usually considered portion of Behar, 91, 184, and 102 occupancy holdings were sold in each of the above years respectively.

"It will thus be manifest that occupancy rights are now saleable in every district of Behar both as a matter of private agreement, and compulsorily in satisfaction of debts; but even had this not been so, it would have been difficult

* Including Guasatou.

to justify, on one of the main principles of the Bill, any distinctive practice in two parts of the same Province. On a review of the whole question, then, the Lieutenant-Governor cannot but conclude that the balance of argument is in favour of extending to Behar the recognition of the right, which the circumstances of Bengal Proper not only justify, but demand. As observed by the British Indian Association in 1878, the recognition of the right of transfer would create a direct interest in the improvement of the soil, would stimulate cultivation, would tend to establish a substantial peasant proprietary, would give a valid security for the realization of the landlord's rent, and, by increasing the marketable value of the land, would lower the rate of interest when the ryot has to borrow. These are all advantages which cannot be lightly foregone; and Mr. Rivers Thompson therefore does not contest the wisdom of this portion of the Bill, the more so as its operation would be made the subject of watchful supervision."

It was however pointed out by the author of this commentary in the 'Statesman'—an argument which the British Indian Association promptly adopted and upon which they based their last petition to the Government of India—that the Lieutenant-Governor has missed the point in these returns, that the sales of which he produced statistics were dependent on the landlord's consent, and that they do not show that a custom has grown up where sales are effected without the consent of the landlord. Further enquiries were therefore made and their results are embodied in the Appendices to the Government of Bengal Report of 1884 on the Tenancy Bill. They justified the adverse criticisms, because the result according to the Government Report of that year, vol. I, p. 18, is: "Wherever throughout these provinces, the custom of free sale is well established, there, occupancy rights are bought and sold without interference on the part of the zemindar. The utmost extent to which interference proceeds is the levy of a fee, when the purchaser's name is registered (which it often is not) in the landlord's sherista."

Right of occupancy is saleable in rent decree and heritable.—A right of occupancy is however saleable in execution of a decree for its rent (sections 65 and 162-166) and is also heritable (section 26).

Effect of transfer of holding by an occupancy or a settled raiyat.—There has been considerable discussion as to the effect of a transfer of a holding in which the tenant has only a right of occupancy, and which, as we have seen, cannot itself be transferred. In *Joy Kishen Mukerji v. Raj Kishen Mukerji*, 5 W. R., 147, the zemindar sued for possession against the transferee, contending that the transfer gave the transferee no rights. It was held that the landlord could not evict the transferee so long as the recorded tenant or his representatives paid the rent, but that he was not bound to recognise the transfer or take rent from the transferee. The effect of this decision is to keep the right and liability in the original tenant, the transferee being regarded as a lessee of the occupancy holder. Other decisions agree in this view—(*Ajoodhya Persad v. Muset*, *Emam Bandee Begum*, 2 Ind. Jurist, 192; *B. L. R.*, Supp. Vol., 725, S. C.; 7 W. R., 528; *Rani Durga Sundari v. Briudavan Chundra Sarkar Chowdry*, 2 B. L. R., App., 37; 11 W. R., 162; *Suddye Purira v. Boistub Purira*, 15 W. R., 261; *Dwarka Missree v. Kanye Sirdar*, 16 W. R., 112). This in fact is consistent with the principal that an occupancy raiyat may lease—(*Jameer Gazeer v. Gunai Mundle*, 12 W. R., 111; *Bibi Sohodwa v. Smith*, 20 W. R., 139); or grant a *mokurari* lease without rendering his lessee liable to ejectment—(*Dumree Shaik v. Bissevariall*, 13 W. R., 291). Again it has been held that the transfer is not a forfeiture—(*Gora Chund Mustafi v. Borada Persad Mustafi*, 11 W. R., 94; *Suddye Purira v. Boistub Purira*, 15 W. R., 261; *Dwarkanath Missree v. Kanye*

Sirdar, 16 W. R., 112). In *Hurihur Mookerjee v. Jadoo Nath Ghose*, 7 W. R., 114, it was said that a tenant with a right of occupancy could not transfer his title without possession as against the zemindar or talukdar; that if a raiyat having non-transferable tenure quits possession and gives over the land to a stranger, he may be treated as having abandoned his rights in the land, or as a tenant-at-will whose tenancy is determined, and that the landlord may sue to have it declared that no interest vests in a purchaser from such tenant. In one of the latest cases on the point, however, a view somewhat different to those before referred to is taken—(*Bibi Sohodwa v. Smith*, 12 B. L. R., 82). In this case Mr. Justice Phear treated a transfer neither as a forfeiture by the original raiyat nor as conveying a right to the transferee; he held the transferee to be a mere trespasser as against the zemindar, whom he considers entitled to keep his own tenant in possession and to evict the transferee, who cannot plead as against the zemindar to resume his occupation. "The defendant," observed Phear, J., "is in actual possession of the soil, tilling and using it for his own benefit, and he has got himself into that situation under colour of an alleged transfer to him, effected by certain raiyats of their right to have possession of, and to use the soil for their own benefit; but upon the plaintiff's case these raiyats had no power to make such a transfer of their rights, and therefore so far as title in himself is concerned, derived through this transfer, the defendant clearly has no right to the possession. Then, can the defendant say that, as regards the plaintiff, the transaction of transfer, although it failed to pass any right to the defendant himself, yet served to place the defendant's possession under the protection or sanction of his grantor's right? I think not; because I cannot extend the mere right of occupancy beyond the right on the part of the person entitled to it, to occupy and till the soil, either by himself or his servants, or by his lessees or licensees, &c., at the furthest, by persons who are in some degree subordinate to him, and under his control, throughout the whole time of the possession. Now it is very plain on the plaintiff's facts, that, as between the defendant and his grantors, the defendant cannot possibly be in any degree dependent upon them in the matter of the possession, because he has obtained from them a complete transfer of all their rights. It appears to be almost absurd to hold that a zemindar in such a case as that made by the plaintiff, where no matter of estoppel occurs, is obliged to treat the possession of one, who is, and whom he knows to be, entirely free of all dependence upon his raiyat, as being the possession of that raiyat; and I think I could, if it were necessary, show that serious mischief might in practice ensue from the application of this doctrine. Thus on plaintiff's facts, I arrive at the conclusion that the defendant has no title himself to the occupation of the soil, and that his occupation of it cannot be justified by the force of his grantor's title. Therefore in my opinion the defendant is an entire stranger to the soil, and a trespasser; and the zemindar, as owner, has a plain right to evict him, in order to protect the possession, if in so doing he only exercises a right of ownership which is not in conflict with the raiyat's right of possession. Then does the act of recovering back the possession from a stranger, who, as against the zemindar, is wrongfully holding it, conflict with the right to that possession on the part of the raiyat, who voluntarily parted with it? It appears to me plainly not; for the only right, if any, which under the circumstances the raiyat can have left to him, is to regain the possession from the zemindar after the latter has recovered it from the stranger; because he certainly could not himself recover it from the stranger to whom he had transferred it for valuable consideration. And if he had no right, as against the zemindar, to transfer the possession, surely no right of his to the possession can be infringed by the zemindar's claiming the possession from the transferee,

though possibly on being obliged to refund the purchase money, he may turn to the zemindar, and successfully maintain that his ineffectual attempt at transfer did not cause him to forfeit his original right to occupy the land." In the Full Bench decision of *Narendra Narain Chowdry v. Ishan Chandra Sen*, 13 B. L. R., 274, which may be treated as a full settler of the question, it was held that an attempt to transfer a right of occupancy by a raiyat, who quits his occupation and ceases himself to cultivate or hold the land, may be treated as an abandonment of the right so as to entitle the landlord to evict the transferee. In his judgment in this case Mr. Justice Phear said: "I ought however perhaps to remark with regard to an observation which has been made in the case of *Bibi Sohodwa v. Smith*, that it was obviously not the intention of the Bench which passed that decision to say anything judicially as to whether or not the grantors or transferors of the jote in that case still had, in the events which had happened, any right to require possession of the land at the hands of the zemindar. All that that decision decided was that whatever the rights of the transferors as against the zemindars might be, those rights did not prevent the zemindar, under the circumstances of the case, from recovering possession of the land from a stranger."

The right of two or three joint tenants of a raiyati tenure held under the plaintiffs was sold in execution of a decree of a Civil Court, and purchased by A who continued the former holders in immediate occupancy of the lands. The plaintiffs sued for possession. No special custom allowing the transfer in the district of such tenures having been proved, *Held*, that there was no transfer by the sale to A of the occupancy rights of the raiyats; that the raiyats had, by agreeing to hold under A, abandoned their rights of occupancy as much as if they had gone away from the land, and that therefore plaintiffs were entitled to *khas* possession—(*Dwarkanath v. Hurish Chunder*, 4 C. L. R., 130; 1 L. R., 4 Cal., 925.)

There is no presumption that any tenure held is not a transferable tenure and a landlord who sues for *khas* possession on the ground that a tenure was not transferable must establish his case as an ordinary plaintiff.—(*Doya Chand v. Anund Chunder*, 1 L. R., 14 Cal. 382). The correctness of this decision is extremely doubtful. The learned Judges (Prinsep and Beverley, JJ.) observe: "In the course of the argument some cases have been cited from the Weekly Reporter, but it is impossible for us to apply the law laid down in those cases because in none of them are the facts stated. We are of opinion that the case of *Dwarkanath v. Hurish Chunder* is not applicable. In that case it was admitted or found that the defendants had occupancy rights, and the learned Judges of this Court in their judgment proceeding on the Full Bench case, *Narendra Narain v. Ishan Chunder*, held that it was for the defendant to prove that such right was transferable. There is nothing in that case to establish the proposition now contended for that it is for the tenant or the person who claims to be the tenant to establish his right to retain the land in any suit brought against him by the zemindar, or whenever the zemindar may think proper to call upon him to show his title. In our opinion the plaintiff is bound to start his case." But the Court forgot that the Full Bench, *Narendra Narain v. Ishan Chunder*, held that the occupancy right is a creation of Act X and is not transferable *ipso facto*. It is therefore on the party who asserts that it is transferable to prove that fact. Suppose an occupancy right is proved in a suit like the above and the question is whether it is transferable the proper test would be to see who would fail if none would offer evidence? Assuredly, the tenant or the purchaser who is treated as a trespasser in *Bibi Sohodwa v. Smith* cited above. The effect of the decision under comment has been practically to disturb the settled case law on the point.

The existence of a custom in a particular district by which rights of occupancy in such district are transferable, will not justify the holder of such right of occupancy in subdividing his tenure, and transferring different parts of it to different persons; and in case of such transfer the zemindar is entitled to treat the transferees as trespassers and eject them—(*Tirthanund Thakoor v. Mutty Lal Misser*, I. L. R., 3 Cal., 774.)

Registry of the transferee's name:—In any case in which a raiyati holding is transferable, it is not necessary that the transfer should be registered in the sherista of the landlord—(*Taramani v. Birgvan*, 1 W. R., 86; *Wooma Churrun v. Hari Prosad*, 10 W. R., 101; 1 B. L. R. S. N., 7; *Joykishen v. Doorga Narain*, 11 W. R., 348; *Karoolal v. Luchmeeput*, 7 W. R., 15). See, however, section 73, *post*.

Recognition of transfer by the landlord.—If the landlord registers the name of the transferee or his heirs, no question of the validity of the transfer will arise, such registration amounting to a recognition of the transferee—(*Amin Buksh v. Bhyro Mundal*, 22 W. R., 493); so by receiving rent from the transferee with the knowledge of the transfer, a recognition may take place—See *ante*, pp. 85-87; or by making the transferee a party to a suit for rent and accepting a decree against him jointly with the transferor—(*Ram Kishore v. Krishna Maui*, 23 W. R., 106). But the acceptance of rent paid by the transferee as *marfutwaree* is no recognition—(*Khudiram v. Rokhini*, 15 W. R., 197); nor the acceptance of rent paid by the transferee without notice that he claims to pay rent by right of transfer—(*Gourlal v. Rameswar*, 6 B. L. R. Ap. 92).

Sub-letting.—See section 85 and notes and section 178 (3) (e).

23. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purpose of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

This section must be read with section 178 (3) (b) which prescribes that nothing in any contract between the landlord and the tenant, after the passing of this Act, shall take away, or limit the right of an occupancy raiyat to use land as provided by this section.

The statutory right of occupancy under Act VIII of 1869 (B.C.) cannot be extended so as to make it include complete dominion over the land, subject only to the payment of a rent liable to enhancement. The landlord is still entitled to insist that the land shall be used for the purposes for which it was granted; and although the Court in such cases will be disposed to place a liberal interpretation on the rights of the tenant, it will not sanction a complete change in the mode of enjoyment—(*Baboo Lal Sahu v. Deonarain Sing*, 2 C. L. R., 294; I. L. R., 3 Cal., 781).

This case was distinguished in *Prosunno Kumar Chatterji v. Jagunnath Bysak*, 10 C. L. R., 25, where the land, with the consent of the zemindar having ceased to be agricultural, and the tenant having since built a homestead or used part of it for tanks or gardens, the nature of the tenure was held not thereby changed, nor the tenant thereby

deprived of any right of occupancy which he might have acquired. "It is true," observes the Court, "that the ruling in the case of *Lal Sahoo v. Deonarain Singh*, I. L. R., 3 Cal., 781, seems rather opposed to this view; but the latter case is very distinguishable from the present in this respect—that there the land was still in a state of agriculture; and what the Court held was, that the tenant had no right, without the landlord's consent, to alter the agricultural nature and use of the land. But here the use apparently has already been changed. A large portion at least of the land is no longer agricultural, but used for the tanks and gardens. In such a case it would seem that the rule laid down by Mr. Justice Ainslie in 6 W. R., Act X, would not apply, and that the building of a pucca house upon land which has ceased to be agricultural, could only have the effect of improving the value of the property and giving the landlord a better security for his rent." Where a tenant has been guilty of a breach of duty in the use of his land, such as making a tank in it, building on it improperly, or changing the character of the cultivation, such conduct does not necessarily operate as a forfeiture, so as to render the tenant liable to ejectment. The tenant of an agricultural holding planted his jote with mango trees to the knowledge but without the consent of his landlord, thus changing the character of the land. More than three years afterwards the landlord sued for a mandatory injunction to have the mango trees removed. Held, that having stood by for more than three years and allowed the tenant to spend his labour and capital upon the land without taking any action in the matter, the landlord was not entitled to a mandatory injunction—(*Noyna Misser v. Rupikuu*, I. L. R., 9 Cal., 609; 12 C. L. R., 300). No tenant taking land is entitled, without some specific agreement on the subject, to change the nature of the land, or to make any permanent alteration in the state of the landlord's property. If a person wishes to lease lands for the purpose of making bricks, that should be the subject of a special agreement between the parties in the same way as when parties take lands for building purposes—(*Anund Coomar Mookerji v. Bissonath Banerji*, 17 W. R., 416). So in a suit for a perpetual injunction against the principal defendants to stop the business of brick-making carried on by them on lands which they had taken under temporary leases from their co-defendants, who were holders of small jotes within the plaintiff's zemindari and to recover damages for alleged injury done to the lands, where the evidence showed such a continued use of the land for 75 years for the purpose of brick-making as raised a strong presumption of acquiescence on the part of the landlord, and that, so far from injuring the land, the defendants had placed it in a better condition than it had been in previously. Held that no case had been made out for the issue of an injunction—(*Mr. Peter Nicholl v. Tarini Churn Bose*, 23 W. R., 298; see 2 W. R., 157; 6 W. R. Act X, 40; 8 B. L. R., 242, App. 70; 11 B. L. R., App. 41; N. W. P., H. C. Rep. F. B. 119, 125).

A raiyat with a right of occupancy may build a pucca house on his land, or do what he likes with the land, so long as he does not injure it, to the detriment of the landlord—(*Nyamootullah Ostagur v. Gobind Churan Dutt*, 6 W. R., Act X, 40).

Materially impair the value of the land.—See Chapter IX 'Improvements,' *post*. Section 76 gives what are 'improvements' instead of being 'deterioration' and section 77 provides that a raiyat at fixed rates and an occupancy raiyat may make those improvements, such improvements include construction of wells, tanks and other works of irrigation and storage, thus superseding *Tarini Churn v. Debnarain*, 8 B. L. R., App. 69; *Koonjo Bihari v. Sheta Balak*, 1 Agra F. B. 119; *Jewa Ram v. Fulleh Sing*, 1 Agra F. B. 125; *Sheo Churan*

v. Basanta Singh, 3 All. Rep. 282; they also include the erection of a suitable dwelling house with out-offices thus superseding partially *Shiv Das v. Bamundas*, 8 B. L. R. 237; 15 W. R. 360; *Juggut Chunder v. Eshan Chunder*, 2 W. R. 220; *Prosunno Kumari v. Sheik Rutton*, 1 L. R., 3 Cal., 696; *Babo Lal Sahoo v. Deonarain*, 1 L. R., 3 Cal., 787; 2 C. L. R. 295, and adopting *Nyamutollah v. Gobind Chunder*, 6 W. R. (Act X) 40; *Beni Madhub v. Joykishna*, 7 B. L. R. 152; 12 W. R. 495; *Brojonath v. Stewart*, 8 B. L. R. App. 51; *Durga Pershad v. Brindabun*, 7 B. L. R. 159, 'unfit for the purposes of tenancy'—i. e., for the purpose of agriculture. The improvements do not include excavating earth for making bricks—(*Kadambini v. Nobin Chunder*, 2 W. R. 157; *Anand Kumar v. Bissonath*, 17 W. R. 416. But see *Peter Nicholl v. Tarini Churun*, 23 W. R. 298).

Not entitled to cut down trees, etc.—Does this mean that he is not entitled

He can ordinarily cut down trees unless prohibited by custom.

to cut down trees except when custom allows him to do so; or does it mean that, as a rule, he is entitled to cut down trees but when there is a custom to the contrary, e. g., that the trees belong to the landlord, he is not entitled to do so? The text which immediately precedes is, that he may use the land in any manner consistent with certain purposes; this power is then limited by a prohibitory clause that when there is custom to the contrary, he is not entitled to cut down trees. The case law on the subject is rather unsettled.

A zemindar has a right to the trees grown in his land by the tenant, who,

The case law on the subject of his power of cutting down trees.

though he may enjoy the benefit of the growing timber, has no power to cut the trees down. The zemindar may sue to have his title in the growing trees declared—(*Sheik Abdool Rahaman v. Dataram Bashee*, Sp. W. R., 367); so in 1 L. R., 2 All., 896, it has been held that trees accede to the soil, and pass to the landholder with the land on the termination of a tenancy, and unless the tenant uses, during the term of his tenancy, his privilege, where he has it, of removing the trees, he cannot do so afterwards; he would then be deemed a trespasser. (Compare also *Chatoorbhuj Tewari v. Syud Villaet Ali Khan*, Sp. W. R., 223; *Musst. Ameorun v. Musst. Sanjeda*, 11 W. R., 226). The latest decision on the point, however, is that of *Goluk Rana v. Nobo Sundari Dasi*, 21 W. R., 344. The lease in this case was a *peshcushi* sunnud, or grant at a quit rent, of one aud a half beeghas of "kunabastov" and waste jungle land; and after specification of boundaries, the deed goes on to recite: Within these limits I have given to you to cultivate as a jote this land; having brought it into cultivation at your own cost, you shall yearly pay me the fixed annual *peshcushi jumma* of Rs. 2-8. Having paid rent into my zemindari kutcheri, you, your sons, and your sons' sons and descendants in succession shall continue to hold the land defined above. The *peshcushi jumma* shall never be changed. Therefore I give you this *peshcushi sunnud*. Birch J., observed: "There is nothing peculiar in this country about the form of this lease. It corresponds to the 'emphyteusis' of the civil law, which was an assignable inheritable right in a certain tract of land capable of yielding fruits by virtue of which, and in return for the payment of a yearly quit rent, the holder during the continuance of his right possessed absolutely the entire use and also the fruits thereof. The reasons for granting these perpetual leases are thus assigned by Domat, and I have no doubt that the same reasons actuated proprietors in this country who had tracts of waste land to dispose of and led them to confer grants of a corresponding nature at a low rent. 'Section 544.—For since the owners of barren lands could not easily find tenants for them, a way was invented to give in perpetuity such kind of lands

on condition that the grantee should cultivate, plant, and otherwise improve them as the word *emphyteusis* signifies. By this agreement the proprietor finds on his part his account by assuring to himself a certain and perpetual rent, and the perpetual tenant finds likewise his laying out his labour and industry to change the face of the ground and to make it fruitful. He goes on to say (section 549) 'that by giving the land and reserving the rent, there is, as it were, a partition of the rights of property between the owner of the land and the perpetual tenant. For the owner who grants the perpetual lease remains master in so far as to enjoy the rent which he has reserved as the fruit of his own proper lands by which he retains the chief right of property, which is that of enjoying the thing as owner of it together with the other rights which he has reserved to himself. And the perpetual tenant on his part acquires the right of transmitting the estate to his successors for ever, of selling it, giving it away, alienating it with the burdens of the rights which the lessor of the rights has reserved to himself, as also a right to plant, to build, and to make what other changes he shall think proper for improving the estate, which are so many rights of property.' The relations existing between the plaintiff and the defendant in the case before us appear to me accurately defined in the last section quoted. At the time the grant under consideration was made the land was waste and jungle. No rights were reserved. To enable the grantee to cultivate he first had to cut down and root out the original jungle, and he was free to plant trees, or sow crops as he thought fit. So long as he obtained his rent, the grantor could not interfere with him. There being an express grant, the question of custom need not be considered. * I can find only one case in which the point before us has been raised; the report of that case, *W. R.*, 1864, p. 367, is so meagre that it is of no importance to us: what the nature of the raiyats' lease was in that case is not stated, and it has not been cited as an authority. It may be the custom in some parts of the country that is between the zemindar and ordinary raiyats, holding under terminable leases, the right to growing trees is with the zemindar; with that question we have nothing to do. We have simply to decide whether the plaintiff-talukdar is the owner of the trees, the subject of this suit. In my opinion such a claim is untenable. The zemindar has, under such circumstances as are disclosed in this case, no more right to the trees planted by the defendants than he has to the crops sown by him."

Obligation of raiyat to pay rent.

24. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

Section 5 of Act X of 1859, and Act VIII of 1869 (B.C.), had: "Raiyats having rights of occupancy, but not holding at fixed rates as described in the two preceding sections, are entitled to receive pottas at fair and equitable rates. In case of dispute, the rate previously paid by the raiyat shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act." This provision is divided in the present Act into three parts, *viz.*, sections 24, 27 and 35.

The grounds of enhancement set forth in section 30 (and possibly in section 29) are all subject to the limitation of this section and section 35. Under no circumstances can a raiyat, with a right of occupancy, be called upon to pay more than a fair and equitable rent—(*Noor Mohamed v. Huree Prosunno*, *Sp. W. R.*, Act X, 75); and in determining what is fair and equitable the Court may take into consideration the rise in wages; but it does not necessarily follow that because wages are double what they were, and the necessities of life have risen, that the old rent is fair and equitable under the altered state of circumstances—(*Savi v. Jeetoo Meah*, *Marsh*, 86). In a suit to enhance the

rate of rent of an occupancy raiyat, the sole ground being an increase in the value of the produce, the words "fair and equitable" in section 5 are to be construed as equivalent to the varying expressions "pergunna rates," "rates paid for similar lands in the adjacent places," and "customary rates," and mean not the rate obtainable by open commercial competition, but the prevailing rate payable by the same class of raiyats for lands of similar description and with similar advantages in the places adjacent. If the customary rate of the neighbourhood had not been adjusted with reference to the increased value of the produce, and an adjustment is requisite in consequence of a rise in the value of the produce caused simply by a rise in the price, and by causes independent both of the zemindar and raiyat, the rule of proportion to be adopted in such adjustments is that the old rent should bear to the increased rent the same proportion as the former value of the produce of the soil calculated on an average of three or five years next before the date of the alleged rise in value bears to its present value—(*Thakurani Dasi v. Bishessur Mukerji*, 3 W. R., Act X, 29). If the rent of a raiyat consists partly of money and partly of services,—an obligation to cultivate and supply indigo at a certain price,—the value of such contract would have to be estimated and added to the old rent, and the aggregate value would form a term in the proportion. (*Ib.*, Norman, J., p 95). This rule of proportion should be adopted only in the absence of any recently adjusted pergunna customary rates; and either party is at liberty to prove any special circumstances tending to show that the application of the rule of proportion will work injustice. (*Ib.* Macpherson, J., p. 48). A claim to enhancement based on the increased productive power of land, or on the increased value of its produce, can only take effect in cases where the neighbouring rates of rent have not accommodated themselves to the altered state of circumstances,—where in short, all the raiyats together are paying less than the fair rate of rent; and to such cases, the principle of the Full Bench Ruling in the case of *Thakoorani Dasi* would apply. But where there already exists a guide to what is a fair rate of rent, the precedent is inapplicable—(*Sreesh Chunder v. Assimunessa*, 7 W. R., 234). The rule of proportion as laid down in the Full Bench case of *Thakoorani Dasi*, applies only to cases in which the sole ground of enhancement is an increase in the value of produce, and to cases in which the rates have not adjusted themselves to altered circumstances. It is inapplicable to cases where the value of the produce has not only increased, but the productive powers of land have decreased and the expenses of cultivation have increased also. In such cases the value of the present decreased average rate per bigha, calculated on the produce of three or five years, must be found; and it must be contrasted with the average value of the produce before the decrease in the productive powers calculated in the same way, and the increased present cost of production, as contrasted with the former cost per bigha, must be ascertained also. When these data are ascertained the formula to be applied will stand thus: The average value of the produce before the decrease in the productive powers of the land will be to the average value of the present decreased produce, *minus* the increased cost of production as the rent previously paid will be to that which the land ought now to pay—(*Showdamini v. Shookul Mahomed*, 7 W. R., 94).

For the rule of proportion laid down by the Great Rent Case, the present Act has substituted another rule similar to it. See section 32.

Protection from eviction except on specified grounds.

the ground—

25. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on

- (a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or
- (b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

This section should be read with sections 65, 89, and 155 and 178 (1) (c).

Section 65 provides that an occupancy raiyat shall not be ejected for arrears of rent.

Section 89 provides that no tenant shall be ejected from his holding, except in execution of a decree.

Section 178, sub-section (1) (c) provides that no contract made with the landlord, either before or after the passing of the Act, shall entitle a landlord to eject his tenant otherwise than in accordance with the provisions of this Act.

Section 155 prescribes that (1) a suit for the ejectment of a tenant shall not be entertained unless the landlord has served a notice on the tenant specifying the particular misuse or breach requiring the tenant to remedy the same and to pay compensation for it and the tenant has failed to comply within a reasonable time with that request, (2) a decree in such suit shall order the amount of compensation or the remedy of the breach or misuse, and fix a time for paying the compensation, or remedying the breach or misuse.

Unfit for the purpose of tenancy.—See section 23 and notes.

Breach of condition consistent with the provisions of this Act.—If the condition be inconsistent with the provisions of the Act, its breach will entail no consequences. But if the condition be consistent with the Act, its breach will subject the tenant to forfeiture. Hence if the occupancy raiyat sublets and the subletting falls in with section 85, no forfeiture will take place.

Disclaimer.—Will a disclaimer deprive the occupancy raiyat from his holding? See pp. 10-12 *ante*. Plaintiffs brought a suit for ejectment on the allegation that their tenants had failed to come to a settlement in respect of a certain jote, and that a notice to quit had thereupon been served on them. The defendants (tenants) in their written statement denied the landlord's title. The lower court found that the jote belonged to the plaintiffs, and the defendants had been still are in the possession of the same as tenants. The court dismissed the suit on ground that the service of notice had not been properly held (on second appeal) that inasmuch as the cause of notice must be based on something that accrued antecedent to the suit, the denial by the defendants of their landlord's title in the written statement would not entitle the plaintiffs to a decree on the ground of forfeiture.—(Prannath v. Madhu, I. L. R., 13 Cal. 96). The plaintiff in 1870 brought a suit for rent, in which the defendant set up and filed a permanent howladari lease, but admitted that he held at the rent alleged by the plaintiff, and that suit was decreed. The Court thinking it unnecessary to decide the question of the validity of the tenure set up by the defendant. In a suit brought after a notice to quit, which was found to be invalid, to eject the defendant and for a declaration that he had no such permanent howladari tenure as alleged, the defendant again set up the howladari lease under which he admitted he had paid a fixed rent to the plaintiff. Held that though the defendant repudiated his particular holding which the plaintiff attributed to him, he did not question the

plaintiff's right to receive the rent, and therefore did not in any sense repudiate his landlord's title. What he did amounted to merely questioning the right of the landlord to enhance the rent, which was not such a disclaimer as would result in law in a forfeiture of his tenure. The plaintiff therefore was not entitled to eject the defendant without giving him a proper notice to quit. *Vixian v. Mout*. L. R. 16 ch. 730 distinguished, on the ground that the principle on which it is based is wholly inapplicable in Bengal. *Babu v. Krishnanath*, 1 L. R., 8 Bom. 222 dissented from—(*Kali Krishna v. Gholamali*, 1 L. R., 13 Cal. 248).

26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property: provided that, in any case in which under the law of inheritance to which the raiyat is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

Devolution of occupancy-right on death. The occupancy right is thus expressly made heritable. Under the old Acts in *Ajodhya Pershad v. Musst. Imambandi*, 7 W. R., 528 (F. B.), the Chief Justice (Sir Barnes Peacock) questioned if an occupancy right is necessarily heritable; so in *Jateeram Surma v. Mungloo Surma*, 8 W. R., 60, a distant relation of the deceased raiyat was not allowed to succeed by inheritance, and set aside the arrangement by the zemindar letting the lands to another tenant. These questions are now settled otherwise by positive law. As to transfer of occupancy rights otherwise than by succession, see pp. 123—144 *ante*. A right of occupancy is however made saleable in execution of a decree for its rent. See sections 65, 162, 164—166.

Enhancement of Rent.

(See the question of settlement of rent discussed in the Introduction, *ante*.)

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

Presumption as to fair and equitable rent.

A raiyat with a right of occupancy is entitled to hold his land upon paying a fair and equitable rent. The law presumes that the rent at present paid is fair and equitable, and this rent cannot be enhanced except after service of notice under section 14, and upon one of the grounds stated in section 18 of Act VIII of 1869 (B.C.)—(*Issur Ghose v. Hills*, W. R. Sp. 148; *Thakurani Dasi v. Bisnessar Mukerji*, B. L. R., 1 Sup. Vol., 202; 3 W. R. (Act X), 110). For further explanation see sections 35 and 24.

For the time being payable.—The benefit of the presumption will always be in favor of the tenant. This section does not purport to protect the landlord but the tenant; when therefore the tenant has been paying a higher rent than his old, and the landlord wants to stop him by setting up a presumption under this section, the time must not be less than three years. See proviso I of section 29 and notes.

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Restriction on enhancement of money-rents.

Does this mean that when an occupancy raiyat pays rent in kind his rent can be enhanced otherwise than by this Act? Of course the provisions of enhancement in the present code apply to money rents only. Is enhancement of *bhaoli* rent possible under the general principles of laws, i. e., otherwise than under this Act?

29. The money-rent of an occupancy raiyat may be enhanced by contract, subject to the following conditions:

Enhancement of rent by contract.

- (a) the contract must be in writing and registered;
- (b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;
- (c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract:

Provided as follows—.

- (i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.
- (ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.
- (iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

This Act provides for the enhancement of money rent only and in two ways, *vis.* **Enhancement possible by contract or by suit.** of money rent is not possible except in these two ways. The contract again must be (a) in writing and registered, which is subject to proviso (I), (b) must not allow an enhancement of more than two annas in a rupee, *i. e.* of one-eighth of the existing rent which is subject to provisos (II and III), and (c) shall not be liable to a further enhancement during the fifteen years next. The fifteen years rule applies also to enhancement by suit, see section 37. The first of these conditions make an addition to sections 17, 18, of the Registration Act (III of 1877). A lease at an enhanced rent for less than a year is exempt for registration under clause (c) of section 18, but would now be registrable under the present section. The proviso attached to this condition is that if the raiyat had been actually paying rent at a higher rate continuously for three years or more he would be precluded from pleading that the contract was not registered or in writing. So that if a landlord can peacefully realise a higher rent for at least three years, this provision will not affect him. The proviso (I) implies that if the raiyat had been actually paying a higher rent for less than three years, the landlord will not be entitled to claim it, unless he has shown that the raiyat made a contract in writing and registered it. This, however, is inconsistent with section 27 which provides that the rent for the time being payable shall be presumed to be fair and equitable. If a raiyat had been paying a rent (higher than his former rent) for two years, under section 27 of the Act, that rent ought to be presumed to be fair and equitable. Condition (a) of section 29 modifies this provision by providing that the term during which the higher rent is paid must not be less than three years. Section 27, however, is meant for the benefit and protection of the tenant; the presumption will therefore always arise in his favour. If the landlord wants to avail himself of the presumption as against the raiyat, he must show that the higher rent has been paid at least for three years.

Condition (b) controls the whole section. Even if the contract be in writing and registered, the enhancement must not be more than two annas in a rupee; where however a higher rent which exceeds this limit is stipulated by a written and registered contract, it will operate only to the extent of the limit. This condition will not apply when an improvement has been made by the landlord to the benefit of which the raiyat is not entitled except by paying an enhanced rent, and the improvement must be substantially effective—See sections 76 to 83 of the Act. This condition is also subject to proviso (iii)—See section 56 of Regulation III of 1793.

Condition (c) relates only to the after-effect of the contract. Whatever be the term of the contract, for the next fifteen years no further enhancement is possible. It is doubtful, however, if this condition will avail when a contract of progressive enhancement is made. Suppose the contract is that a higher rent shall be paid for ten years, and then a still more higher rent for another ten years, and so on. Will the bar of fifteen years apply? The wording of the section will not make such a contract inoperative, though it must be said that a contract of this nature would be against the spirit of law.

"It is considered that it would be destructive of the objects of the Bill if occupancy raiyats were left perfectly free to deprive themselves by their contracts of the right to hold at fair and equitable rates secured to them by the law. But on the other hand, absolutely to prevent such contracts, it is thought, involve too great an interference with the freedom of the parties. A middle course has accordingly been adopted."—(S. O. B. III.)

The proviso has been added at the instance of the Hon'ble Mr. Evans.

May be enhanced by contract.—When the enhancement is made by a compromise in a rent suit, though it is based upon a contract

Enhancement by compromise or arbitration is not contemplated by this section.

between the parties, such contract is not contemplated by this section, otherwise registration of the compromise would have been necessary. So a rate fixed by arbitration in a suit for arrears of rent, where the parties had agreed to submit their claims to arbitrators—(cf *Madhu Majhi v. Rajah Nilmani Sing*, 18 W. R. 533).

Gradual assessment not contemplated by this section.

It is doubtful if the case of a gradual assessment is the subject of this section and whether the limitation prescribed by clause (c) will apply to it.

Where a potta in its terms expressly stipulates for an increase of rental according as the lands let are brought under cultivation, and a measurement taken, a landlord is entitled to recover such increased rent as agreed upon in the potta without serving upon the tenants any notice under section 14 of Bengal Act VIII of 1869—(*Nistarini v. Bonomali*, and *Dinonath v. Bonomali Chatterji*, 1 L. R., 4 Cal., 941; *Dwarkanath v. Baburam*, 11 C. L. R., 320, 1 L. R., 9 Cal., 72.) Assessment of rent according to the area in the occupation of the tenant is the subject of section 52 and not of this section: Where a landlord sues for rents on account of land found to be in defendant's possession in excess of the quantity mentioned in the kabuliyat, which provides that if on measurement the actual area is found to be in excess of that mentioned therein, the raiyat will pay for the whole land at the rate specified, he is not required to issue a notice under this section, for the raiyat is not holding or cultivating land without a written engagement or under a written engagement not specifying any period—(*Ram Narain v. Gumbeer*, 19 W. R., 108). The necessity of serving notice of enhancement does not cease, because the defendant pays a higher rent for the moiety of the defendant's tenure to a person other than the plaintiff—(*Shaik Neamat Ali v. Shaik Abdool*, 2 Hay, 443). A lease from generation to generation gave the boundaries of the land leased, estimated the area thereof, and fixed a certain rent per bigha. It contained a condition that if on measurement the actual quantity of land should turn out to be either more or less than the estimated area, the rent should be increased or decreased in proportion at the same rate per bigha. In a suit for enhancement of rent on the ground that the land leased contained more than the estimated number of bighas, the lease being one which did not specify the period of the enhancement, held that notice of enhancement was necessary under the Bengal Act VIII of 1869, section 14. In a previous suit the present plaintiff had sued the defendant for the amount of rent originally fixed in the lease, and the defendant claimed in that suit to have the rent reduced in accordance with the terms of the lease, and a measurement was thereupon made, which showed that the quantity of land held by the defendant was in excess of that named in the lease: that suit was decided in favor of the plaintiff for the rent claimed. Held, that the measurement adopted by the Court in the former suit was not, as regards the amount of the excess binding upon the defendants, and that even if it were, the fact of such measurement would be no sufficient notice of enhancement to the defendant—(*Ekram Mundle v. Hulodhur Pal*, 1 L. R., 3 Cal., 271). Defendant held 29 bighas and 83 bighas of land: the former admittedly as tenants to the plaintiffs, the latter they claimed to hold rent-free. Plaintiffs brought a suit for arrears of rent on the 29 bighas and the 83 bighas pursuant to a notice of enhancement, service of which they failed to prove, and the suit was dismissed on that ground. In special appeal plaintiffs contended that the suit was for assessment and not for enhancement, and that no notice was necessary. Held that having (as by the Rent Law they were entitled to do) treated the suit

originally as one for enhancement, it was too late to shift ground in special appeal—(*Rash Bihari v. Khettra Nath*, 1 C. L. R., 418).

Where land is let for the purpose of clearing jungle, or other reclamation, on this ground, or any other ground mentioned in the lease, a reduced rent is provided for the first few years, and it is said that the rent is to be at a certain rate as the full rent, such rent is not to be liable to enhancement—(*Huro Prosad v. Chundee Charun*, 1 L. R., 9 Cal., 505; 12 C. L. R., 251; *Soorasundari v. Golamaly*, 19 W. R., 65, P. C.)

One of the holders of an under-tenure having agreed with his immediate landlord that an enhanced rent should be paid in respect of the tenure, the enhanced rent fixed was paid for some years, when default being made, the landlord brought a suit against all the joint-holders for arrears of rent at the enhanced rate. *Held*, that the landlord was entitled to rent at the rate claimed, until circumstances were shown from which it would follow that the rate claimed was not the fair and equitable rate payable. *Held*, further, that the holder by whom the agreement to pay the enhanced rent was made, was not solely liable to pay that rent, but that the tenure was also liable, and that if it could be shown that the other holders had acquiesced in the agreement they were otherwise responsible—(*Burhunnuddi v. Mohan Chunder*, 8 C. L. R., 511.)

The defendant being, under a settlement originally obtained from the Government, bound to pay a particular rent to the plaintiff upon previous decrees. who had subsequently to that settlement obtained an *ijara* from the Government, the plaintiff, in 1877, sued to enhance that rent and obtained a decree upon which a compromise was made, the defendant agreeing to pay a higher rent for the years 1281 and 1282. The defendant having paid no rent for 1283 and 1284, the plaintiff sued for the arrears at the higher rent. *Held* that no proper proceedings for enhancement having been taken, a fresh contract with the defendant entered into, the special arrangement came to an end at the expiration of 1282, and the original arrangement revived, and therefore the plaintiff was not entitled to demand more than the original rent payable—(*Burhunnuddi v. Mohan Chunder*, 8 C. L. R., 511). On the 25th January 1884, the plaintiff obtained a decree against the defendants for assessment of enhanced rent. Shortly afterwards the defendants executed a *kabuliyat*, at a reduced rate, for eleven years ending the 31st Assin 1282 (16th October 1875). After the term had expired the plaintiff sought to recover rent from the defendants at the rate settled by the decree of 1864. *Held*, that the decree had been superseded by the subsequent arrangement, and that the plaintiff could not recover rent at an enhanced rate, except under the provisions of Bengal Act, VIII of 1869—(*Gobin Chunder v. Gour Chunder*, 1 L. R. 6 Cal., 759; 8 C. L. R., 161).

Enhancement of two annas per rupee.—The money rent which is subject of enhancement by contract under this section is the actual rent payable by the *raiyat*. Where, however, he pays a nominal rent, his enhancement is not, I presume, to be governed by this section. In *chur* and *derah* land subject to the encroachment of rivers, as long as the *raiyat* has not acquired the right of occupancy he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord. But after he acquires a right of occupancy, he shall be subject to the rules of chapter V, where if after he acquires a right of occupancy his land is washed by the river, and he does not retain his lien upon it by payment of rent to the landlord, the land if reformed may be resettled

with him upon fresh terms and no question of enhancement arises. But if he retains his lien by payment of a nominal rent, when his land reforms, he is bound to pay the old rent or such rent as the land will bear. It would be inequitable in that case to apply the rule of an enhancement of 2 annas per rupee upon the nominal rent, and restrict the landlord from further enhancement for the next fifteen years.

30. The landlord of a holding held at a money rent by an ^{Enhancement of rent by suit.} occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, (namely):—

- (a) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for holding at so low a rate;
- (b) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent.
- (c) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;
- (d) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable, when it was not previously practicable.

The old section ran thus: "No raiyat having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely:—

That the rate of rent paid by such raiyat is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the places adjacent; that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat; that the quantity of land held by the raiyat has been proved by measurement to be greater than the quantity for which rent has been previously paid by him." (Section 17 of Act X of 1859 and section 18 of Act VIII of 1869 B.C.)

Under the old law the word 'rent' in section 17 or 18 meant both a money rent as well as rent in kind. The Rent Commissioners for the first time proposed to separate the rules of enhancement of money rent from rent in kind.

Section 22 of the Rent Commission Bill provided: "Subject to the other provisions of this Act, a landlord is entitled to enhance the rent payable to him in money by a raiyat for land in which such raiyat had a right of occupancy." Such rent may be enhanced upon any one or more of the following grounds, and not otherwise: (1) on the ground

that the rate of rent paid by such raiyat is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the vicinity; (2) on the ground that the quantity of land held by such raiyat has been shown by measurement to be greater than the quantity for which rent has been previously paid by him; (3) on the ground that the productive powers of the land held by such raiyat as compared with such powers at the subsequent time, have increased otherwise than by the agency or at the expense of the raiyat and from causes not merely temporary or casual; (4) on the ground that the prices of produce in the locality or at the usual markets as compared with similar prices at the time when the rent was fixed or at any subsequent time, have increased otherwise than by the agency or at the expense of the raiyat, and from causes not merely temporary or casual.

The Bengal Tenancy Bill No. I proceeded upon a different line: It assumed

B. T. Bill No. I.

"that there are at least in some parts of the country certain rates of rent generally recognized as the rates payable by occupancy tenants for the various classes of land held by them. Where this is so it would, it is presumed, be not very difficult for a revenue-officer to ascertain those rates, and then starting from them as a basis, and taking into account such changes in the productive powers of the soil and in the prices of produce as may have occurred since they were fixed, to prepare tables of the enhanced rates, which subject to allowance in exceptional cases, might fairly and equitably be demanded by the landlord for each class of land under the existing conditions. The revenue-officer, it is thought, might further show in his tables the average gross produce of each class of land and its estimated value. Supposing this to be done, the Civil Courts would be relieved almost entirely of those economical and statistical enquiries which at present are involved in enhancement suits. They would accept the rates and produce statistics shown in the tables as *prima facie* correct for lands of the classes to which the tables referred, and might restrict themselves to considering the comparatively simple and limited questions as to whether the particular lands in question in the suit belonged to the class alleged, and whether there was any exceptional circumstances connected with them which would require the rent to be fixed at a different rate from that set down in the table. It is of course well understood that there would be many parts of the country for which, owing to the non-existence of recognised rates of rent, or to the great varieties of the soil, no such tables could be prepared, and further that, even where it is possible to prepare such tables, their preparation must be a work of time. With a view to these considerations, the Bill has been so drawn as to provide, first, in subdivision B of chapter VI for suits to enhance money rents where a table of rates has been prepared, and, secondly, in subdivision C for such suits where a table of rates has not been prepared."—See sections 62 to 73 of the Bengal Tenancy Bill

B. T. Bill No. II.

No. I, and also sections 74 and 75. An inquiry, however, showed "that an authoritative table of rates could be prepared by the Government of Bengal only for exceptional tracts, and no other general method has been submitted to us for placing before Courts the information with respect to productive powers of the land, which would enable them to apply the rules for enhancement on the ground of increase in those powers. But the zemindars objected to the total elimination of this as a legal ground of enhancement, and as it was part of the old law, it has been retained. Enhancements on this ground when the increase is caused by the landlord's improvement will be facilitated by the system of enquiry and registration provided for hereafter; but enhancements on the ground of increase of productive powers caused by fluvial action will still, we fear, be liable to the

same difficulty, caused by the absence of any proof of the former productive powers of the soil, as has rendered this ground of enhancement futile in past years. On the other hand enhancement on the ground of prices would be greatly facilitated by the preparation of authoritative price lists by the Local Government. It should be explained that the price lists of staple food crops are to be taken simply as indicating a general rise or fall in prices, and without any reference to the particular crop grown on the land, the rent of which is in dispute; and our intention is that the price lists should be worked out very much on the principle on which the commutation of tithes according to average prices is worked out in England as explained at pages 250 *et seq* of Mr. Justice Field's Digest." Then sections 41 to 50 of the Bengal Tenancy Bill No. II framed provisions of enhancement which are substantially those that we have in the present Act. Bill No. III made some changes, one of which is that the word 'village' was substituted for 'vicinity' in ground (a) of section 30.

The landlord of a holding.—'Landlord' under its definition (section 3 (4)) is a person immediately under whom a tenant holds, and includes the Government. It therefore includes an ijaradar, or dur-ijaradar. Where a party took an ijara of an estate while certain raiyats were under notice of enhancement, but neither contributed nor offered to contribute necessary expenses, he was held not entitled to share in the increased rents—(J. R. Savi v. The Collector of Jessore, 17 W. R., 382.)

The ijaradar. Indeed under the old law it has been held that under section 13 of Act X of 1859, and section 14 of Act VIII of 1869 (B.C.), when any land is in the farm of a lessee, the notice of enhancement must issue from the farmer as the person to whom the rent is payable—(Binodlal v. Mackenzie, 3 W. R. (Act X), 157; Hemchunder v. Purno Chunder, 3 W. R. (Act X), 162; Doorga v. Shyamjha, 8 W. R., 72; Watson & Co. v. Nil Kant, 10 W. R., 381); and this notwithstanding an agreement between the zemindar and the farmer by which the zemindar reserved to himself the right of serving notices of enhancement—(Doorga Churan v. Goluk Chunder, 23 W. R., 228.) So a person by whom notice of enhancement was served at the time when the rent was payable to him is entitled, either entirely by a sale or partially by a lease, to convey to the purchaser or lessee the rent with the incident of its being liable to enhancement under that notice. The purchaser or lessee is not obliged to serve fresh notice of enhancement—(Kharkee Roy v. Fuzundali Khan, 18 W. R., 144. An ijaradar is entitled to enhance the rent of raiyats holding under him, where there is no condition or stipulation in his lease precluding him from so doing—(Doorga Persad v. Joy-narain, I. L. R., 2 Cal., 474; see I. L. R., 3 Bom., 23.) But not a manager appointed under section 243 of Act VIII of 1859 who is appointed merely to collect rent and other receipts and

Manager. profits of the land, to carry on the existing state of affairs as the proprietor himself had been doing and has no power to issue notice of enhancement—(Khetter Mohun v. Wells, I. L. R., 8 Cal., 719; 11 C. L. R., 13.) But managers appointed under section 95 of this Act may sue for enhancement of rent,—section 98 (3). The Act even goes further, because reading this section with section 187 (1), it may be fairly argued that even an agent may sue. But see notes under that section.

The 'landlord' in this section means a landlord of the entire 16 annas. One of several joint proprietors of an estate can maintain a suit for enhancement of his share of the rent without a *butwara*—Traillocho Taran v. Muthora Mohan, Sp. W. R. (Act X), 41; 2 B. J. P. J., 202; so the holder of a specific share in an estate not regularly par-

tioned may sue for enhancement of his share of the rent—*Ram Lochan v. Petambur*, Sp. W. R. (Act X), 111:3 R. J. P. J. 97; See *Gunga Narain v. Saroda Mohan*, 12 W. R. 30; *Bhyrub Mundle v. Gunga Ram*, 17 W. R., 408; *Haradhun v. Ram Newaz*, 17 W. R., 414; *Dinabundhu v. Dino Nath*, 19 W. R., 168. In *Raj Chunder v. Raja Ram*, 22 W. R., 385, however, a contrary view has been taken. In this case it was held that a suit will not lie to enhance the rent of an undivided fractional share of a tenure of which the plaintiff alleges himself to be the landlord, and it was doubted if the owner of a fractional share of a superior tenure was competent to maintain a suit for enhancement of rent of a fractional share of an under-tenure subordinate to the former. But in *Harrish Chunder v. Ram Chunder*, 18 W. R. 528, it was held that the fact of a *butwara* having taken place would in no way prevent a co-sharer from enhancing the rent of a raiyat on his particular share, notwithstanding that the original arrangement of the jumma had been made on the understanding that the tenant paid such and such a rent at the time of the partition. One of several joint proprietors may, without making his joint proprietors parties, bring a suit for enhancement of rent against raiyats holding under him, from whom he has been in the habit of realizing separate rents—*Doorga Prosad v. Joynarain*, I. L. R., 2 Cal., 474; the leading case on the point is *Gani Mahomed v. Moran*, and *Doorga Prosad v. Joynarain*, (F. B.) I. L. R., 4 Cal., 96; 2 C. L. R., 370 which held that—One co-sharer cannot enhance the rent of share when such an enhancement is inconsistent with the continuance of the lease of the entire tenure. Where it has been arranged between the co-sharers of an estate and their tenant that he shall pay each co-sharer his proportionate share of the entire rent, each co-sharer may bring a separate suit against the tenant for such proportionate share. In the absence of such an arrangement, no such suit can be maintained. Such an arrangement may be evidenced either by direct proof, or by usage from which its existence may be presumed, and is perfectly consistent with the continuance of the original lease of the entire tenure. But an arrangement of this nature will not enable one co-sharer to sue the tenant for a *kabuliyat*, for a co-sharer who obtains a *kabuliyat* is bound, at the request of the tenant, to give him a *potta* upon the same terms, and the grant and acceptance of a binding lease of any separate share cannot co-exist contemporaneously with the original lease of the entire tenure. The cancellation and determination of the original lease ought not to be presumed from the mere fact of a separate payment of rent to one or more of the co-sharers. For a full judgment in this case, see pp. 70-71, *ante*. This decision is not applicable where the *butwara* proceeding did effect such a complete change in the nature of the original tenure as to create three new tenancies in the place of the old one—*Sarut Sundari v. Anund Mohan*, I. L. R., 5 Cal., 273. A suit by one of several co-sharers for enhancement of the rent of his own share will not lie, although he may have been in the habit of recovering the rents of his own share separately and have joined his co-sharers as defendants—*Bharat Chunder v. Kali Das*, 5 C. L. R., 545; I. L. R., 5 Cal., 574; *Rajendra Narain v. Mohendra Lal*, 3 C. L. R., 21. In a suit for enhancement by one co-sharer, to which the other co-sharer was made a party, it has been held that one sharer is not competent to issue a proper notice of enhancement without the consent of the other co-sharers previously obtained, though the rent had been paid to each co-sharer separately. Under the ruling of the Full Bench, in the case of *Gani Mahomed v. Moran*, I. L. R., 4 Cal., 96, he must first establish his right to a separate contract to recover his rent separately on his individual share—*Kashee Kishore v. Alip Mandle*, I. L. R., 6 Cal., 149; 7 C. L. R., 107. A suit for arrears of rent at an enhanced rate brought by all the shareholders will lie, notice under section 14 of Bengal Act, VIII of 1869 having been issued at the instance of some

of the persons entitled to the rent—(*Chunni Sing v. Heera Mahaton* (F.B.) I. L. R. 7 Cal., 633 (per Garth, C.J., *Pontifex* and *Mitter*, JJ., *Morris* and *McDonell*, JJ., dissenting); 9 C. L. R., 37.) Even if a single shareholder can raise the rent of a joint tenant without the consent of his coparcener, he can only do so in a suit to which all the 16 annas proprietors must be made parties—(*Gopal v. Macnaghten*, I. L. R. 7 Cal., 751.) Two co-sharers, joint owners of a zemindari, caused their shares to be separately registered in the Collector's office under section 10, Act XI of 1859. Subsequently one of the co-sharers sued certain persons (who held raiyati tenures in the co-sharer's zemindari) for enhancement of rent without making the other co-sharers party. Held that no such suit would lie—(*Jogendra Chunder v. Upen Chunder*, and *Hurish Chunder*, I. L. R., 8 Cal., 353; 10 C. L. R., 331. A and B were taluqdars of a certain village, each having an eight annas' share. A certain raiyat held a jote within the village, in respect of which he paid his rent separately—eight annas to A and eight annas to B. A served a notice of enhancement on the raiyat, but the notice was signed by A only, and it did not appear that the consent of B had been previously obtained. A afterwards instituted a suit for arrears of rent at the enhanced rate, making B a defendant to the suit. Held that the notice of enhancement was sufficient to maintain a suit so framed.—(*Bidhu Bhushan v. Komaruddi*, I. L. R., 9 Cal., 864). The mere fact of there being other co-sharers in an undivided mehal is not sufficient to put the plaintiff out of court in a suit for enhancement in respect of a particular plot of land, and the proper time in such a case is, whether the defendant tenant has been holding under the plaintiff separately, or under a joint lease from the plaintiff and his co-sharers in the mehal. The cases of *Guni Mahomed* and *Jogendra Chunder* distinguished.—(*Rash Bihari v. Sakhi Sundari*, I. L. R., 11 Cal., 644). These decisions will help the reader to frame suits of enhancement by co-sharers.

Of the holding of an occupancy raiyat.—'Holding' is a parcel of land held

The section (S. 3 (9)) applies only to raiyats and agricultural lands.

by a raiyat, and a raiyat is one who has acquired a right to hold land for the purpose of cultivation (section 5). This section will not therefore apparently apply to land which has been let on lease for the erection of a school or church—(*Rani Shuroomya v. Blumhardt*, 9 W. R., 552.) Nor to land situated in a town or used for building purposes, and not for agricultural or horticultural purposes—(*Madan Mohan v. Stalkart*, 9 B. L. R., 97; 17 W. R., 441; *Rani Durga Sundari v. Bibi Omdatunnessa*, 9 B. L. R. 101; 17 W. R., 151; 18 W. R., 235, F. B.; *Brojo Nath v. Lowther*, 9 B. L. R., 121; 17 W. R., 183; *Kali Mohan v. Kalee Kristo*, 11 W. R., 183; *Kalee Kishen v. Srimati Janoki*, 8 W. R., 250; *Maharajah Sutees Chunder v. Huri Mohan*, 1 Hay, 275.) See notes

Basloo and udbasloo.

under section 20, p. 99. *Basloo* land, however, upon which the raiyat's house is built, does not fall within the definition of land for building purposes, and is consequently liable to enhancement under this section—(*Naimuddi v. Scott Moncrieff*, 3 B. L. R., A. C., 283; 12 W. R., 140.) In delivering his judgment in this case, Macpherson, J., observed: "It is true that some kinds of *basloo* lands cannot be enhanced under Act X of 1859, or Act VIII of 1869 (B.C.), e. g., land in a town on which a house is built. But it is equally true that some kinds of *basloo* land are liable to enhancement, and do come under the provisions of the Rent Law, e. g., land on which stands the house of a raiyat who is engaged in cultivating the surrounding lands. The case of a raiyat building a group of a few huts upon a small piece of ground, used by him as his residence and cowshed, &c., and keeping a portion of lands as *oathan*

(courtyard of his house) is quite different from the case of an indigo or silk manufacturer, who may have erected a large number of buildings scattered over a large area of ground. In the former case the whole of the raiyats' residence with *oathan* is assessed at *bastoo* rates; but in the latter case only those blocks of land upon which different parts of factories, such as vats and other buildings are situated, are assessable at *bastoo* rates—*Premchand v. Brown*, 6 W. R., Act X. 92. See sub-clause (f) of clause (2) of section 76, and also clause (1) of section 77. Where a lease was granted for building purposes by a person with a limited interest in the estate, or a life tenant, the lessee is not thereby relieved from enhancement claimed by a party succeeding to the life tenant—*Jogressur v. Rajendra*, 5 W. R., Act X. 34. The rent of a julkur is not liable to enhancement under this section, as no right of occupancy can be acquired in julkurs and tanks (see notes under section 20). The Rent Law does not entitle a lessor to enhance the rent payable from a lessee on account of a right leased to the latter to collect lac insects from trees growing in former's land—(*Gopal Sing v. Sum Kuri*, 23 W. R., 458.) No suit for *kabuliyat* or *surkhut* will lie under Act VIII of 1869 (B.C.) in the case of a house situated

House-rent.

in a town, but the lessee of a share of a house has a right to raise the rent of such share after due notice, and to eject the tenant if he refuses to pay the higher rent. "The suit as it has been brought," observed Macpherson, J., "is in the nature of a suit for *kubuliyat*—the plaintiff requiring the defendant to execute a *surkhut* as regards two-thirds of the house. But the house being in the town of Gya, the provisions of Act VIII of 1869 (B.C.) do not apply to the case, and no suit for *kabuliyat* or *surkhut* will lie. The best course for the plaintiff will be to serve a fresh and distinct notice on the defendant, that from a date named rent will be payable by him at a certain increased rate, and that if he fails to pay at that rate he must quit the premises—(*Ramlal v. Chummon*, 24 W. R., 271). Plaintiff having served notice of enhancement in terms of section 14 of the Rent Act VIII of 1869 (B.C.), of certain lands held by defendants on which reservoirs and buildings, for the purposes of silk filature, had been constructed, brought a suit for such enhancement under Act VIII of 1859. The lower Court dismissed the suit, in spite of a statement in the plaint that the suit was brought under the latter Act on the ground that the rent of the tenure was not enhanceable under the Rent Law. Held, that the lower Court ought not to have refused to decide the suit in the form in which it was brought, but ought to have inquired as to the nature of the tenancy, whether it was held at a fixed rate or not. Held further that, although the suit was brought under the general law of procedure, the notice was not vitiated by the fact that the reasons assigned for the enhancement were reasons taken from the Rent Law applicable to the case of raiyats possessing rights of occupancy—(*Kumar Paresh Narain v. Robert Watson & Co.*, 3 C. L. R., 543.) *In re The Collector of Monghyr v. Hakim Madur Bux*, 25 W. R., 136, it was laid down that the mere fact that a building has been erected on a piece of land with the consent of the proprietor, does not give the occupant a right to hold the land perpetually at the same rate. So *in re Rancee Durga Sundari v. Bibi Omdutunnisa*, 18 W. R., 235, it was held that the erection of a building upon the land with the consent of the landlord does not give to the occupant a right to hold the land perpetually at the same rent. A suit for enhancement of rent, in pursuance of a notice to pay the enhanced rent or quit the land within three months, cannot be maintained where the land in question was originally let by the ancestor of the defendants for building purposes—(*Purno Chunder v. Sadat Ali*, 2 C. L. R., 31.) When the Collector has issued due notice of enhance-

ment, under section 14 of Regulation VII of 1822, of the jumma of lands situate in town and subject to that regulation, and on failure by the tenant to accept a settlement at the revised rate an action in ejectment has been brought, the Civil Court has no power to consider whether the new rate of assessment is reasonable, or in any way to interfere with the amount of the revised jumma as fixed by the Collector. Where the tenant refuses to accept a revised settlement under such circumstances, he is to be entitled to a reasonable time within which to remove a house standing upon the lands in question—(Ram Chundra v. The Government, 6 C. L. R., 365).

Held at money rent.—The old Act did not characterise the nature of 'rent'

The section applies only where the holding is nuggi or held at money rent.

and section 18 of Act VIII of 1869 (B.C.) applied both to rent reserved in money as well as rent in kind. Both the old and new section, however, use the words 'enhancement' or 'enhance,' which do not ordinarily include commutation or variation of rent. In granting an enhancement the same standard ought to be used, *e. g.*, when a landlord received rent in kind at the ratio of 8 : 8, he might sue

The same standard of rent should be used.

under section 18 of Act VIII of 1869 (B.C.), to raise his proportion to 9 : 7, or when he received rent in money, he might sue for a higher rent in money; but the wording of that section precluded the idea that a landlord receiving rent in kind might sue under that section to convert his rent to the prevailing rent in money, or that a landlord receiving rent in money might sue

Is conversion of rent in kind into money rent or vice versa feasible under this section?

under it to convert it to the prevailing *bhaoli* rate. It has been, however, held that a zemindar may sue to convert rents paid in kind into rents paid in money under section 18 of Act VIII of 1869. This question first arose in the case of Yakub Hossein v. Sheik Chowdry Wahid Ali, 4 W. R., Act X, 23. The two Judges (Bayley and E. Jackson, JJ.) differed in opinion, and the case was laid before a third Judge (Trevor, J.) He held that the intention of the laws of this country was to discourage rent in kind, and encourage the introduction of money rent. Hence, when the landlord sued to convert his rent in kind into the prevailing money rent, the Courts of Justice ought to encourage such a suit. This decision was followed in Thakur Persad v. Nawab Syud Mahomed Bakr, 8 W. R., 170. It may be argued that if under section 18 of Act VIII of 1869 (B.C.), a conversion from rent in kind into money-rent was feasible, why should not the contrary case, *e. g.*, the feasibility of the conversion of a money rent into the prevailing *bhaoli* rent, hold good? To this, the answer is that the decision of Trevor, J., does not proceed upon the construction of section 18, but upon what he considers to be the policy of law. A conversion of a money rent into rent in kind is a retrograde step, and is against the policy of law. It is doubtful if the decisions cited above are correct. At any rate, they have been over-ruled by the present section of the new Act. This section seems to have been based upon Justice Campbell's interpretation of the law.

"At the time of the passing of Act X of 1859," observed Campbell, J., "the state of things was this. The tenures and rents of the raiyats were still for the most part regulated by the old customs of former times. But two things especially required legal definition. First, there was doubt as to the mode of prescription by which a *khudkasht* or occupancy tenure was acquired, * * *. Second, there was an entire want of any regulated and defined legal mode of enhancing the customary money rates. Sections 5, 13 and 17 declared the right of the zemindar to enhance the rents of all tenures which had either submitted to enhancement since the permanent settlement or had been created without

specific stipulation since that period, provided it was proved that the former rent was not fair and equitable, and that the grounds of enhancement should be confined to certain particular grounds specified in section 17. At first it appears to have been intended to confine these grounds to two, in accordance with the letter of the old regulation, viz. :—

(1.) That the rent paid by any raiyat was below the prevailing rate paid by the same class of raiyats in the places adjacent; and

(2.) That the raiyat had more land than he paid for.

But before the Bill finally passed, a third very equitable ground of enhancement was added, giving the zemindar the right to claim an increased rent in consequence of the increased value of the produce—an increase which both the old custom of division of produce would have given him, and the subsequent practice had in fact without express provision of law more or less given him. Enhancement might henceforth be awarded on the specific ground that 'the value of the produce or productive powers of the land have been increased otherwise than by the agency and at the expense of the raiyat' This was a new provision in favour of the zemindar."

From this extract it will be observed that Mr. Justice Campbell looked upon section 17 as applying to money rents only. The new section is very clear. It applies only to *nugdi jotes*, or money rent holdings, and the prevailing rate must also be a money rate; otherwise the object of section 40 which should be read with it will be frustrated. The new Act uses both the words enhancement and commutation, section 30 referring to the former, and section 40 to the latter. There are now no rules for the enhancement of the existing proportion of grain rent into a higher proportion. Section 40 shows that the policy of law is to give facility of commuting rent in kind to money rent. That object would be frustrated if the prevailing rate in section 30 can be rent in kind. The word enhancement presupposes the same standard of rent.

By an occupancy raiyat.—The Act defines "a settled raiyat" (section 20), and an occupancy right (section 21), but it does not define an occupancy raiyat. But the settled raiyat is an occupancy raiyat under sub-clause (b) of clause (3), section 4. Comparing sections 20 and 21 with this sub-clause, it seems that a settled raiyat is a convertible term with an occupancy raiyat. This section (section 30) applies only to occupancy raiyats; it does not apply to talukdars or holders of intermediate tenures—(*Huronath v. Bindubasini*, 3 W. R., Act X, 26; *Nava Kishore v. Paudul*, 8 W. R., 312; *Panioty v. Juggut Chuuder*, 9 W. R., 379; *Budurunissa v. Chundra Kumar*, 10 W. R., 454). Nor will it apparently apply to a raiyat without a right of occupancy—(*Chundra Kumar v. Azeemuddin*, 14 W. R., 100.) A tenant's right of occupancy is implied in a suit for enhancement—

1 W. R., 86 (3 R. J. P. J. 186.) By serving a notice on defendant under the terms of section 17, Act X of 1859, plaintiff was held to have treated defendant as a raiyat having a right of occupancy and to be debarred from suing him for enhancement of rent as an under-tenant or middleman—(*Chunder Nath v. Shotooram*, 12 W. R., 343). "I should not," says Markby, J., in another case, "venture to express a final opinion. It does, however, appear to me that where a zemindar comes in and gives a notice of enhancement to a tenant on the first of the grounds stated in section 17, Act X of 1859, he does treat him as a raiyat having a right of occupancy"—(*Thakoor Dutt v. Gopal Sing*, 14 W. R., 4). The same argument applies to a suit for enhancement.

This section applies only to occupancy raiyats.

Notice or suit for enhancement implies an occupancy right.

Institute a suit to enhance rent.—This section should be read with section 154 of the Act. The repeal of the provisions about notice of enhancement and the wordings of the present section giving a right to institute a suit to enhance rent, with section 154, evidently imply that notice of enhancement will not now be necessary.

"We have dispensed with the notice of enhancement which is required by the present law, and which was also required by the old Regulation in force before 1859. Such a large percentage of enhancement cases have failed, because it was not found that the notice had been served, or because the notice was defective in form, that it has appeared to us highly expedient to do away with a detail, the practical result of which has been to delay and impede a decision of the real question at issue between the parties. We have accordingly made the institution of the enhancement suit to be notice to the tenant. Under the existing law the enhancement notice must be served, in districts or parts of districts where the Fasli year prevails in or before the month of Jyete, and in districts or parts of districts where the Bengalee year prevails in or before the month of Pous. The very proper and reasonable object of this is, that the raiyat may know the fact of increased rent being claimed in such time as will enable him to relinquish the land before the end of the agricultural year, if he is unwilling to hold it at an increased rent. If the notice is not served in or before the month of Jyete or Pous, it will not affect the rent of the following year. We have effected the same object by requiring the plaintiff, in order to affect the rent of the following year, to be presented in districts in which the Fasli or Umla year prevails, in or before the month of Bysakh, and in districts in which the Bengalee year prevails, in or before the month of Aghsan, i. e., one month earlier than the time for service of the present notice. This will enable the summons in the suit to be served at or before the time at which the notice is now served, and the tenant will therefore have an equal facility to relinquish the land before the close of the agricultural year, if he is unwilling to continue to hold it at an increased rent (section 96 of the Draft Bill)." (R. C., R. I.) Section 96 of the Rent Commission Bill has been revised and modified to section 154 of the Act. So also it was held under the old law that a judgment passed against a raiyat in a contested suit operates as a notice of enhancement to him taking effect from the commencement of the year following that in which the decree was passed—(*Modhusudan v. Gopce Kishen*, 6 W. R., (Act X) 81; *Ram Nath v. Joikishen*, 11 W. R., 3; see also *Ramjeebun v. Tripoora*, Marsh, 396; *Watson v. Nilkanto*, 10 W. R., 331.) The necessity about notice was first introduced by section 9 of Regulation V of 1812. It was then re-enacted in section 13 of Act X of 1859 and section 14 of Act VIII of 1869 (B. C.) which now stand repealed. Section 13 of Act X of 1859, ran thus:

"No under-tenant or raiyat, who holds or cultivates land without a written engagement,—or under a written engagement not specifying the period of such engagement,—or whose engagement has expired, or has become cancelled, in consequence of the sale for arrears of revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed,—shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or raiyat, in or before the month of Chait specifying the rent to which he will be subject for the ensuing year, and ground on which an enhancement of rent is claimed. Such notice shall be served by order of the Collector, on the application, (which may be on plain paper), of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant or raiyat. If, for

any reason, the notice cannot be served personally upon the under-tenant or raiyat, it shall be affixed at his usual place of residence, or if he have no such place of residence, in the district in which the land is situate; the mode of service of such notice shall be by affixing it at the mal kachahri of such land, or other conspicuous place thereon, or at the village Chowri or Chowpal, or at some other conspicuous place in the village in which the land is situate." Section 14 of Act VIII of 1869 (B. C.) was also the same, but it substituted "in districts or parts of districts where the Fusli year prevails in or before the month of Jyete and in districts or parts of districts where the Bengalee year prevails in or before the month of Pous" in place of the corresponding provision.

Plaint what to contain and how to be drawn up.—Section 148 (h) *post* provides for the particulars that ought to be entered in the plaint of an ordinary rent suit. Besides them, in a plaint of an enhancement suit, other particulars are needed to be inserted. Under the former law, a prior notice was necessary before a suit could be instituted. The present law does away with the necessity of a notice, a suit itself being treated as a notice of enhancement. The result is that the grounds under which notice was held to be sufficient or bad under the old law, will ordinarily apply to the plaints of enhancement under the present law. The decisions that will be quoted under this head have been passed with regard to notice, but I submit that they will apply to suits for enhancement. Where a plaint does not specify the grounds on which an enhancement is claimed, it should be dismissed—(Ram Chunder v. Hurish Chunder, 5 W. R. (Act X), 14; Syud Soojawut Ali v. Haree Thakur, 6 W. R., Act X, 44; Roma Nath v. Joykishen, 6 W. R., Act X, 80; Lala Sing v. Bibi Runzunnessa, 8 W. R., 271; Raj Kishen v. Pran Kishen, Sp. W. R., Act X, 89; Pran Huri v. Farbuti Charan, 13 W. R., 227; Lala Raghubans v. Asloo, 20 W. R., 294.) The plaint must be clear and distinct, and worded in such a manner that the tenant is able to understand the grounds on which the enhancement is sought. When it was objected that the notice was not in the exact words of clause 2, section 17 of Act X of 1859 [section 30, clause (b), (c), and (d) of this Act] it was held that if the raiyat knew to what provision in the law of enhancement he was pleading, then although the notice was not in the exact words of the law, yet it was sufficient because the object of the notice, *viz.*, that the raiyat may know the exact ground on which the enhancement is sought had been obtained—(Radha Bullab v. Bihari Lal, 12 W. R., 536). Again Ainslie, J., says: "There is no doubt that the great strictness with which cases involving questions of such notices were dealt with has been much relaxed in the later practice of this Court, and it has been held in the later rulings that a notice is good, if without containing the exact term of the law, it states with sufficient precision the nature of the claim, the amount asked for and the grounds on which the enhancement is sought, so that the raiyat served with notice may not be misled and can clearly comprehend the case which he has to meet—(McGiveran v. Harkhoo, 18 W. R., 203). The plea of the informality of a suit should not prevail, where the raiyat knew exactly the nature of the demand he had to meet and was not in any way prejudiced thereby—(Wooma Churn v. Grish Chunder, 17 W. R., 39; Gopeenath v. Jeetoo, 18 W. R., 272; Audh Bihari v. Dost Mahomed, 22 W. R., 185). The object of a notice of enhancement is that the tenant may know what are the grounds on which his landlord seeks to enhance his rent, so that he may have an opportunity of coming forward to contest any of those grounds. Therefore where a raiyat has known perfectly the grounds on which enhancement is claimed, the mere omission of the words "prevailing rate", "same class of raiyats," or "of lands of similar description and advantages," in a notice of enhancement

cannot operate to invalidate the notice—*Tirthmund v. Mohun*, 17 W. R., 279; *Byesunnesa v. Bydyanath*, *Id.* 354. The same remarks apply to a plaint in an enhancement suit.

When a raiyat holds two separate holdings, one joint suit of enhancement with respect to both may possibly be brought, if the two holdings can be distinguished and the grounds of enhancement of each be distinct. But if we apply the analogy under the old decisions that separate notices should be issued for each holding, it would follow that separate suits should also be brought. The reasons in both cases are the same. A raiyat is entitled to a separate suit for each separate holding he

possesses; not only because some of his holdings may be protected from enhancement, while others are not, but because he may be ready to pay the enhanced rent upon some; while he may prefer to relinquish others. If the whole of his *jummas* are lumped together and treated as one holding, he has no means of exercising his discretion—(*Bojoy Gobind v. Junhobi*, 8 W. R., 252; *Dinobundhoo v. Pran Kishen*, 20 W. R., 146; *Nidhoomoni v. Kristonath*, 20 W. R., 442; *Dwarkanath v. Hurecmohun*, 20 W. R., 404.) But the notice need not be on a separate piece of paper for each holding. It is sufficient if the tenant is able to distinguish the separate holdings on the notice—(*McGiveron v. Duriaw Chowdry*, 20 W. R., 479.) When, however, a number of holdings had been treated as one consolidated holding, and the raiyats had paid their rent in one entire sum as a consolidated *jumma*, it was held that one notice was sufficient. “Had the *jumma*,” observed the Court, “not been treated as a consolidated *jumma*, we should have been disposed to declare that one notice to enhance the aggregate *jumma* was insufficient; because in cases where a raiyat holds several tenures, or separated *jummas*, he may, on receipt of notice, use his discretion as to which to retain and which to relinquish. If his several tenures are lumped together and treated as one tenancy, and he is served with the one notice, he is precluded from using this discretion. Under such circumstances, we think we ought not to infer from the fact that the *jumma* has, for purposes of convenience, been treated as one in the summary suits and other proceedings, that the original separate tenures have been surrendered, and that a fresh taking at an entire rent must have been made; because to do so would seriously prejudice important rights, which the plaintiff may have acquired under the original holdings. Therefore, though we hold that under the circumstances disclosed in this case one notice was sufficient, we must declare that the raiyats are entitled to relinquish or retain all or any one of the separate holdings occupied by them at their option under section 20; and the lower Court in deciding the case must ascertain what are the separate holdings, and assess a separate rent on each distinct holding—(*Jadub Chunder v. Etwaree*, *Marsh.*, 498; 2 *Hay*, 599; *Dinabundhoo v. Prankishna*, 20 W. R., 146). A suit of enhancement under section 15 of Act VIII (B.C.) of 1869, must, when the tenant holds different jotes, the rents of which it is sought to enhance, distinctly specify the several holdings, the amount of enhanced rent claimed in respect of each holding, and the grounds for claiming such enhanced rent—(*Udoytara v. Shibnath Surma*, 9 C. L. R., 207.)

The grounds should be specified in the plaint.—In suits of enhancement it is absolutely necessary that in the statement of grounds there should be some words to show that it is the intention of the landlord to proceed under some particular clause or clauses of section 30. A plaintiff ought to inform the tenant or raiyat the grounds on which the landlord seeks to have the higher rent, and not merely to specify all

not be mixed up.

the grounds mentioned in the rent law, of which some apply to one part of the land and some to another, so that it is impossible for the raiyat to know what case he has to meet—(*Baneemadhub v. Taraprosunno*, 21 W. R., 35; *Shibnarain v. Akhilchunder*, 22 W. R., 485; *Shibnarain v. Ekramunnissa*, 17 W. R., 356). In the first case, Couch, C.J. observed: "The intention of notice is that the under-tenant or raiyat shall be informed of the grounds upon which the landlord seeks to have the higher rent. This is not satisfied by giving a notice specifying all the grounds of enhancement mentioned in the Act, some of which may apply to one part of the land, and some to another. It leaves the tenant in uncertainty as to the grounds upon which the higher rent is demanded. It does not give him the information which we think it was intended he should have. In this case there are 59 plots of land containing 12½ bighas. It is impossible to suppose the same grounds of enhancement, even if they were consistent, would apply to every plot. One part may be subject to enhancement on one ground and another part on another, and this notice does not enable the tenant to tell what it is that the landlord really asserts as to his right to enhance." The same observations will apply to an indistinct plaint in an enhancement suit. That a tenant is holding at a rate lower than the surrounding rates is not a sufficient

Ground (a). ground to be specified in a plaint; the words "surrounding rates" are not tantamount to the ground of enhancement mentioned in clause 1 of section 18 (section 30a)—(*Boido Nath v. Ramjoy*, 9 W. R., 292). The omission of the words "same class of raiyats" in a plaint under section 18 of Act VIII of 1869 (B.C.), even if unintentional, is sufficient to invalidate a claim for enhancement—(*Mirza Syefoollah v. Chaya Thakur*, 18 W. R., 532; *Ramsuran v. Bhojan*, 11 W. R., 515; *Kalee Nath v. Humea*, 12 W. R., 506. See, however, *per contra* *Tirthnand v. Mohun*, 17 W. R., 279.) The omission of the words "same class of raiyats" may be overlooked if there is evidence on the record of the rates of rent payable by such raiyats; but if there is no such evidence the suit must be dismissed—(*Mathoor Nath v. Nilmoni Sing*, 13 W. R., 297.) The words "equal raiyats" (সমান রায়ত) in a plaint is sufficient to show that the enhancement is sought under ground 1—(*Poresh Narain v. Gour Sundar*, 15 W. R., 391.) This Act has substituted occupancy raiyat for the same class of raiyats; hence the plaint must mention occupancy raiyats. The omission of the words "land of a similar description and with similar advantages in the places adjacent" make a plaint legally defective—(*Ram Suran v. Bhojan*, 11 W. R., 515.) Where the lands the rent of which is sought to be enhanced, consist of more than one plot, it is not sufficient for the landlord to serve the tenant with a notice of enhancement specifying all the three grounds of enhancement mentioned in section 18 of Bengal Act VIII of 1869. Such notice should specify the particular ground or grounds on which each separate plot is alleged to be liable to enhancement. *Semble*—This would not be so if

the same ground or grounds applied to every plot, the rent of which is sought to be enhanced (*Gunesh Chunder v. Ram Pria*, I. L. R., 5 Cal., 53). A suit of enhancement under the 2nd clause of section 18 is defective, if it omits to state the words "otherwise than by the agency or at the expense of the rayat himself," or in what way the productiveness of the land has increased—(*Synd Soojat v. Hurree*, 6 W. R., (Act X), 44; *Ram Suran v. Bhojan*, 11 W. R., 515; *Mudun Mohun v. Stalkart*, 17 W. R., 441.) But where a raiyat well knew and pleaded to the grounds of enhancement the mere omission of the words "otherwise than by the agency or at the expense of the rayat" in the plaint is not fatal to the landlord's suit—(*Watson v. Ramdhun*, 17 W. R., 495.) If it is sought to base enhancement on increased productive power of the land, there ought to

be a special declaration of the particular causes of increase; the mere words of section 18, clause 2, are not to be considered sufficient notice in all cases—(*Shibnarain v. Aukhil Chundra*, 22 W. R. R., 485.) In a suit for enhancement on the allegation that the defendant holds land in excess of the area admitted by him to be in his occupation, the plaint must state that such excess has been proved by measurement—(*Kalee Kumari v. Shumbhoo Chunder*, 6 W. R., Act X, 23.) The plaint must also mention the quantity or amount of the “excess lands,” and how it has been ascertained—(*Grish Chunder v. Issur Chunder*, 12 W. R., 226.) A suit for enhancement of rent after notice should not be dismissed merely because the landlord has made a mistake as to the exact area of the lands which his tenant holds—(*Wooma Nath v. Ashumbari*, 12 W. R., 476.) The inclusion by the plaintiff in his notice of land belonging to *lakheraj* holding of the defendant is no reason for dismissing his whole suit—(*Chunder Kumar v. Bholanath*, Sp. W. R., (Act X), 110.) But if a plaintiff brings a suit to enhance the rent of tenants, and altogether misrepresents the areas and boundaries of the holding, the misrepresentation vitiates the plaint and renders the whole suit liable to dismissal—(*Tarini Charan v. Mohima Chundra*, 22 W. R., 426; *Shumsul Osman v. Bunsidhur*, 15 W. R., 366.) It is not a good ground of enhancement that the holder of a tenure may possibly, having regard to the quality of the land, be able to increase the profits which he derives from it—(*Denonath v. Gugun Chunder*, 15 W. R., 274.) Act VIII of 1869 (B.C.) did not authorize an enhancement of rent of a *raiya* to the rates which the land will bear—(*Jaun Ali v. Jan Ali*, 9 W. R., 149.) A suit of enhancement must be distinct and intelligible as to the grounds upon which enhancement is sought. For instance, a plaint to the effect that “there has been a measurement, and the lands have had their productive powers increased, therefore according to the *nirik* of the villages in the *turuf*, Rs. 39 will be a proper *jumma*,” is certainly indistinct; for it is impossible to say whether the enhancement is meant to be on account of increased productive powers, or of the rent being less than that paid for similar land in the neighbourhood, or on account of its having been shown by measurement that the tenant held more land than he was supposed to hold—(*Khondkar Abdoor Rahman v. Wooma Churn*, 8 W. R., 330; *Gobind Kumar v. Huro Chunder*, 4 B. L. R., Ap, 61.) It should be remembered that defects in a plaint can, however, be amended under the Civil Procedure Code.

Suit of enhancement by whom to be brought.—By section 14, Act VIII of 1869, (B.C.), notice was to be served on the application of the person to whom the rent is payable. In the present Act the ‘landlord’ is to institute a suit for enhancement and the landlord is a person immediately under whom a tenant holds and includes Government. Compare, however, section 187 and notes. When a *zemindar* has leased out his property to a farmer, the suit of enhancement must be brought by the farmer and not the *zemindar*, notwithstanding an agreement between the *zemindar* and the farmer, by which the *zemindar* reserved to himself the right of serving notices of enhancement—(*Binode Lal v. Mackenzie*, 3 W. R., Act X, 157; *Doorga Roy v. Shyam Lal*, 8 W. R., 72; *Watson v. Nil Kanta*, 10 W. R., 331; *Hem Chunder v. Purno Chunder*, 3 W. R., (Act X), 162; *Gubdoo Mull v. Hoolasee*, 2 Agra, 247; *Doorga Churn v. Golak Chunder*, 23 W. R., 228.) A person by whom notice of enhancement was served at the time when the rent was payable to him, is entitled, either entirely by a sale or partially by a lease, to convey to the purchaser or lessee the rent with the incident of its being liable to enhancement under that notice. The purchaser or lessee is not obliged to serve a fresh notice of enhancement—(*Kashi Roy v. Fuzund Ali Khan*, 18 W. R., 144; 9 B. L. R., 125.) It is not of course necessary

that the landlord should himself sign the plaint. The signing plaints is entirely within the scope of the ordinary duties of a mofussil *naib*; and no proof is required that the landlord authorized the agent to sign the plaint—(Digambur v. Gobind Chunder, Marsh 354; 2 Hay, 402.)

Who is to be sued for enhancement of rent.—A trespasser cannot be sued for enhancement of rent—(Raj Mohan v. Gooroo Churan, 6 W. R., Act X, 106; Rushum Bibi v. Bisso Nath, *ib.*, 57.) A raiyat cannot be said to be in the relation of a tenant until he has obtained possession of the tenure—(Bharut Chunder v. Osimuddin, 6 W. R., Act X, 56.) A suit of enhancement should be brought against the raiyat in possession—(Ram Narain v. Hurish Chunder, 1 W. R., 210.) The provisions for enhancement of rent are applicable only where the occupant of the land has a right to remain in possession as against the owner—(Chunder Kumar v. Azeemuddin, 14 W. R., 100.) In a case of joint tenure not subdivided under any sanction from the inferior landlord, notice of enhancement need not be served on all persons interested

under an alleged subdivision. The landlord is only to look to those whom he finds in his register as his recorded tenants—(Mathoor Nath v. Khettur Nath, 2 W. R., Act X, 93.) So also in the case of a transfer the landlord is bound only to look to his registered tenants—(Sadhu Churan v. Guru Churan, 15 W. R., 99; Surup Chunder v. Dhonye Biswas, 23 W. R., 102.) But where a zemindar has received rent for several years from the tenant in possession, notwithstanding that he is not registered in his *sherista*, it is upon such recognized tenant that his notice of enhancement must be served—(Nobu Kumar v. Kishan Chunder, Sp. W. R., (Act X), 112; Anundmayi v. Moheendra Nath, 15 W. R., 265.) A suit of enhancement should not be served upon parties other than the one known to the zemindar as the actual tenant—(Huro Mohan v. Gopal Chunder, 12 W. R., 265.) Where a landlord receives rent from a wife as his tenant, the suit of enhancement against the husband is not sufficient—(Sreeram v. Moolluk Chunder, 4 W. R., Act X, 2.) A suit for enhanced rent in respect of a tenure held jointly cannot proceed except against all joint tenants—(Surumayi v. Johur Mahomed, 10 C. L. R., 545.)

Joint trial of enhancement suits.—Where three suits were brought against four defendants holding three distinct tenures, for the enhancement of the rent of each tenure, *Held* that they ought not to have been tried together, as the evidence in each case would need be given separately so as to show the rates severally applicable—(Juggut Chunder v. Yar Mahomed Sircar, 24 W. R., 217.)

Onus probandi.—In a suit for arrears of rent at enhanced rates, the *onus probandi* is on the plaintiffs both as to quantity and rates—(1 W. R., 56, 58; Golamali v. Baboo Gopal Lal, 9 W. R., 65; Khola Mundle v. Piru Sirkar, 6 W. R., (Act X) 18.) What plaintiff must prove in a suit for enhancement with reference to cl. 1, section 18, Act VIII of 1869 (B.C.)—(Doma Roy v. James Melon, 20 W. R., 416.) In a suit for enhancement under section 17, Act X, if the defendant pleads that the productive powers of the land have been increased by his own exertions, the *onus* is upon him—(1 W. R., 23 3 J. R. J. P. 146; overruled by Poolin Bihari v. Messrs. Watson and Co, F. B. 9 W. R., 190; Raj Kishen v. Kali Churan, 15 W. R., 109.) In a suit for enhancement, where the defendant pleads that the whole or portion of the land is *lakheraj*, the *onus* is on the plaintiff to prove that it is his *mal* land, or that he has been in receipt of rent in previous years in respect of

the disputed land—(*Huryhur v. Goomanee*, 2 Hay, 652 F. B.; *Motee Lall v. Jadooputi*, 2 W. R., (Act X), 44; *Mirtonjoy v. Raja Baroda Kant*, 6 W. R., (Act X), 18; *Jogesvari v. Gadadhur*, *ib.*, 21; *Shibnarain v. Chidam Das*, *ib.*, 45; *Dhan Mani v. Suttoorghan*, *ib.*, 100; *Raj Kishore v. Hureehur*, 10 W. R., 117; *Premchund v. Brojo Nath*, 10 W. R., 204; *Umbika Churn v. Ramdhun*, 11 W. R., 35; *Mun Mohan v. Sreeram*, 14 W. R., 285.) Where the defendant replies that the land does not belong to the plaintiff's estate, the *onus* is on the plaintiff to prove that the disputed land has paid rent to him—(*Mirza Mahomed v. Radha Mohan*, 4 W. R., (Act X), 18; *Gungadhur v. Bimola*, 5 W. R., (Act X), 37). But there are several decisions of the High Court, *per contra*, which place the *onus* in the defendant to show his tenure to be *lakheraj*—(*Sridhur Mudi v. Brojo Nath Koondoo*, 2 B. L. R., 211; *Nehal Mistri v. Huree Persad Mundle*, 8 W. R., 183; *Hidaram Bhuttacharjya v. Ashruf Ali*, 9 W. R., 103; *Bibi Ashrufunnessa v. Ananga Mohan Deb Roy*, 5 W. R., (Act X), 48.) In a suit for enhancement where the defendant pleads that rent had been assessed on lands covered by hedges or ditches and forming boundaries between fields, and that according to custom such land was not liable to pay rent at all, the *onus* is on the defendant to prove the custom—(*Huroo Chowdry v. Jogessur*, 6 W. R., (Act X), 46.) In suits for the resumption of lands alleged to be held as *lakheraj* the *onus* lies on the plaintiff—(*Hurryhur v. Madhub Chunder*, 8 B. L. R., 563; 14 Moore's I. A., 153, P. C.) This decision was followed in *Arfunnessa v. Peary Mohan*, 1. L. R., 1. Cal., 378. Similarly a person seeking to resume *lakheraj* land must give *prima facie* evidence to show that rent has been paid for that land at some time since the 1st December 1790—(*Koylash Basini v. Gocoolmani*, 1. L. R., 8 Cal., 231); compare *Parbuti Churn v. Raj Krishna*, B. L. R., Sup. Vol., 162; *Sonatum v. Moulvi Abdul Farar*, B. L. R., Sup. Vol., 109). It has, however, been held in a suit for enhancement of rent where the tenant pleaded that the land sought to be enhanced was held by him rent-free, the *onus* is on the tenant to prove *prima facie* that such portion of the land is so held by him; and if he be successful in this, the *onus* is then shifted upon the landlord to rebut such *prima facie* evidence—(*Newaz v. Kali Prosaanno*, 1. L. R., 6 Cal., 543). Similarly when it is admitted that the defendants hold certain lands within the plaintiff's *zemindari*, some at least of which are rent-paying, the defendants if desirous of proving that any of these lands are rent-free, are bound to give some *prima facie* evidence of the fact, before they can call upon the plaintiff, the *zemindar*, to prove that the whole or any part of the lands is *mâl*—(*Akbur Ali v. Bhyen Lal*, 1. L. R., 6 Cal., 666). These latter two cases turned upon the special facts of the case. It was therefore held in a later case that in suits for the resumption of lands alleged by the defendant to be *lakheraj*, the burden of proof is in the first instance on the plaintiff to show that the lands are *mâl*. The fact that the defendant is a tenant of the plaintiff's is a matter to be taken into consideration by the Court in determining whether, on the facts of the case, the plaintiff has made out a *prima facie* case; but unless the Court finds that the plaintiff has made out a *prima facie* case, judgment should be given for the defendant—(*Bacharam v. Peary Mohan*, 1. L. R., 9 Cal., 813). In a suit for enhancement in respect of land, which the defendant claimed to hold as a dependant *taluk*; held that the *onus* was upon the *zemindar* to show that the land was included in the *zemindari* at the time of the permanent settlement;—(*Assanullah v. Basarut Ali*, 1. L. R., 10 Cal., 920).

When is plaintiff entitled to a decree.—A landlord who has failed to show what the prevailing rate is, cannot ask the Court to give him a decree according to the rate which the defendants' witnesses admit the land will bear.

There is no authority under Act X of 1859 to enhance the rent of a raiyat to the rates which the land will bear; and if the plaintiff cannot prove the existence of his grounds of enhancement, the suit must be dismissed—(*Jaun Ali v. Jan Ali*, 9 W. R., 149; *Juggeswar v. Ishan Chunder*, 20 W. R., 18; *Doma Roy v. Melon*, 20 W. R., 416; *Sprubjeet v. Misselbach*, 15 W. R., 148; *Chundermun v. Sreeman*, 15 W. R., 119). If the plaintiff fails to prove one of the grounds specified in the notice of enhancement, he is entitled to a decree for enhancement on account of any other ground which is proved—(*Ram Kant v. Rajah Mohesh*, 7 W. R., 172). In a suit for enhancement of rent a plaintiff must frame his suit and prove his case in exact conformity with the provisions of law which enable him to increase his profits—(*Bhuban Chunder v. Ramdyal*, 14 W. R., 55). Where enhancement is sought for on the ground that the rent paid by the defendant is below the rate prevailing in the neighbourhood, it is not enough for the plaintiff to show that the adjacent lands are of the similar description to those held by the defendant, he must also show that they are held by persons of the same class with the defendants—(*Wooma Nath v. Ashumbari Bewa*, 12 W. R., 476). Nor is it sufficient to find that the enhanced rent claimed is the same as that in an adjoining village, but it is also necessary to enquire whether that rent is paid by the same class of raiyats, or whether the land is of a similar description, or whether it possesses similar advantages—(*Nubo Kumar v. Oman*, 7 W. R., 148). Under the present Act, also, it must be shown that the prevailing rate is paid by occupancy raiyats—(*Doma Roy v. Melon*, 20 W. R., 416.) In a suit for enhancement of rent if the plaintiffs are unable to show that they are entitled to the rent exactly as they claim it, the Court is not debarred from giving them a decree for such enhanced rent as it thinks ought to be paid, i. e., to divide the land into different classes and assign a separate rental to each description—(*Bhugwan Chunder v. Jeghur Khan*, 22 W. R., 456). In a suit for rent on an enhanced rate the landlord is not indispensably bound to prove the very rate which he claims in his notice—(*Sreekanth Ghose v. Bhugwan Chunder*, 24 W. R., 13). A Court cannot decree what it may consider to be fair and equitable rates, when the plaintiff merely asks for a decree at the prevailing rates. The Court must find specifically whether the rate claimed by the plaintiff is actually paid by the neighbouring raiyats of the same class for similar land, or what rate is so paid and decide accordingly—(*Pelaram Kotal v. Nund Kumar*, 6 W. R., (Act X), 45;) so he is bound to prove the alleged rate he claims, and on his failing to do so, the Court is not obliged to order an Amcen to measure, the lands to fix the rates—(*Khola Mundel v. Piroo Sircar*, 6 W. R., (Act X), 18). But if a plaintiff sues on two separate grounds and fails to prove one, he can have a decree in respect of the other—(*Ram Kant v. Rajah Mohesh Chunder*, 7 W. R., 172; *Bonomalee Churan v. Shorooop Hootail*, 14 W. R., 61).

If the landlord fails to prove the grounds of enhancement, a decree declaring the tenure to be liable for enhancement may be given. On this point the early decisions were that such a decree was not possible. But later and more modern decisions are to the contrary.—If a landlord fails to prove the service of notice in a suit for enhancement, he is not entitled to a declaratory decree with reference to future years. His suit must be dismissed—(*Kristo Mati Debia v. Fakcer Chunder Khan*, 3 W. R., (Act X), 140; *Anundmoy Chowdrain v. Chundermoni Dasi*, *id.*, 139; *Radhamoni Dasi v. Maharani Shibesvari Debia*, 6 W. R., (Act X), 25.) On the other hand it has been declared that in a suit for enhanced rent where liability to enhancement is disputed, a decree declaring the tenure liable to enhancement may be given without proof of notice—*Weekly Reporter*, Full Bench Rulings, 115; 2 Hay., 652; *Marshall*, 523; *Nuffer Chunder v. Jonathun Paulson*, 19 W. R., 175 (P.C.); *Bissonath*

v. Taraprosunno, 22 W. R., 482; *Rajah Nilmoni v. Heeralal*, 23 W. R., 442). So a decree may declare that a tenure is not protected from enhancement, but it cannot declare that a decree-holder is entitled to enhance the rent at a reasonable rate—(*Kalinath v. Sheik Abbas*, 24 W. R., 92; *Rajah Nilmoni v. Heeralal*, 23 W. R., 442.) So in a suit for arrears of rent of a particular year at an enhanced rate, the Judge has no jurisdiction to declare plaintiff's right to enhanced rent for the future—(*Bhoobunmohini v. Kedarnath*, 12 W. R., 141; *Surubjit v. Mr. Miselbach*, 15 W. R., 14). If in a suit for enhancement, the plaintiff fails to prove that he has served the defendant with a proper notice, the Court is not bound to make a declaratory decree, but whether it shall do so or not lies entirely in its discretion—(*Guncsh Chunder v. Ram Pria*, I. L. R., 5 Cal., 53). N brought a suit against P for enhancement of rent. P's defence was first that no notice of enhancement had been given; secondly, that the rent was not enhanceable, as he and his predecessors in title had held it at a fixed rent from the date of the Permanent Settlement. The suit was dismissed on the ground that no notice had been given, but the Munsiff stated in his judgment that he considered the rent enhanceable. The decree merely ordered that the suit be dismissed, the portion of the judgment as to the enhanceability of the rent not being embodied in the decree. P therefore had no right of appeal

Res judicata.

against that portion of the judgment. In a subsequent suit by N against P for enhancement of rent of the same tenure, it was held that under the rule laid down by the Privy Council in *Soorjimoni v. Sadanund*, 12 B. L. R., 304; 20 W. R., 337, and *Krishna Bihary v. Bunwarilal*, I. L. R., 1 Cal., 144; 25 W. R., 1; I. L. R., 2 I. A., 283; P was precluded by the decision in the former suit, from denying that the rent of the tenure was enhanceable, although the decision on that point was not embodied in the decree. The material finding in each case should be embodied in the decree, and if they are not, it is incumbent on the parties to avoid their being bound by decisions against which they have no right of appeal, to apply to amend the decree in accordance with the judgment—(*Niamut Khan v. Phadu Baldia*, I. L. R., 6 Cal., 319). But relying upon a portion of the judgment in *Ran Bahadur v. Lucho Koer*, I. L. R., 11 Cal., 301, (P.C.), a divisional Bench held that the decision of *Niamut Khan* has been implicitly overruled, and that where a former suit between the same parties in respect of the same subject matter has been dismissed on a preliminary point, a finding in that suit on the merit in the plaintiff's favour will not bar the defendant from putting forward the same defence on the merits in a subsequent suit by the same plaintiff against the same defendant—(*Nundo Lal v. Bidhoo Mukhi*, I. L. R., 13 Cal., 17). The provisions of this Act contemplate not only that a decree declaring the tenure to be enhanceable can be given, but a decree declaring that the raiyat will pay a certain enhanced rent from a certain future period shall be given. See section 154 *post*. Where a landlord fails in his claim for enhanced rent he is entitled to recover the old rent by another suit—(*Shajada Rahimuddin v. Radha Mohan*, 6 W. R., Act X, 96). A suit for enhanced rent having been dismissed, the landlord may by another suit recover rents at the rate admitted by the raiyat in the enhancement case. The law of *res judicata* does not apply, because the cause of action, the subject-matter of suit, and the question at issue, are not the same in both cases—(*Khedarunnesa v. Boodh Bibi*, 13 W. R., 317). Under sections 42 and 43 of the Civil Procedure Code, plaintiff must bring their entire claim and every remedy enforceable in respect of that claim into Court at once, and if they fail to do that in any suit, they cannot afterwards avail themselves of any remedy on which they have not chosen to insist in the first suit. Suits for enhanced rent and

suits for rent, are claims arising in respect of the same subject-matter, and a plaintiff cannot be allowed, after having unsuccessfully sued for rent at an enhanced rate, to sue for the original rent for previous years—(*Kunnook Chunder v. Gurao Das*, 1. L. R., 9 Cal., 919.) A suit for arrears of rent at enhanced

Decree for old rent rates, where plaintiff fails to adduce sufficient evidence to support his claim for enhancement, should not be dismissed altogether, if defendant admits a certain sum to be due for the years in question, but should be decreed to the extent of admission—(*Musst. Akasbuty Koer v. Heeraram Monder*, 24 W. R., 82; *Budhun Orwan v. Jamadar Baba Jogeswar*, 24 W. R., 4). But in a suit for enhancement where the defendant set up a kabuliya, the Court cannot give a decree at the rate specified in the kabuliya, a suit to enhance being very different from a suit to recover arrears of rent at the rate originally fixed, and being formed entirely upon different principles. To a suit for enhancement, it will be no bar to plead that all arrears according to the original rate have been paid—(*Soora Sundari v. Golam Ali*, 15 B. L. R., 125, P.C.; 19 W. R., 141, P.C.; *Juggesvar v. Ishan Chunder*, 20 W. R., 186; *Huro Nath v. Gobind Chunder*, 23 W. R., 352). Where a suit for an arrear of rent at an enhanced rate is not decreed, the Court cannot give a decree for rent at the old rate—(*Saroda Mohun v. Sibopoori*, 24 W. R., 35). In *Bhubo Sundari v. Kasheenath*, (22 W. R., 351), however, Mr. Justice Kemp explained the Privy Council decision referred to above thus: He says: "That was also a suit for arrears of rent in pursuance of a notice of enhancement. The contention on the part of the appellants, amongst other points raised, was that, even if they were not entitled to enhance the rent, they were entitled to recover rent at the rate specified in the kabuliya. Their Lordships say that no issue was raised whether the rent at the rate specified in the kabuliya had been paid or satisfied, and that there was nothing in the case to show whether it had been paid or not. Therefore their Lordships were of opinion that the plaintiffs were not entitled to a decree in that suit for the rent at the rate fixed by the kabuliya. Now in this case the liability for rent at the rate admitted by the defendant was not disputed, and he did not appeal against the decree of the first Court directing him to pay to the plaintiff rent according to the jumma admitted by him, the defendant. Therefore the decision of the Privy Council is not in any way applicable to the circumstances of the present case." So in *Brojonath Tewari v. Mr. G. Grant*, (22 W. R., 13), Mr. Justice Phear referred to the Privy Council decision and observed: "There the suit appears to have been brought solely for the purpose of establishing the plaintiff's right to enhance, and the cause of action relied upon initiated in the service of notice. Neither side attempted to treat the suit as a mere claim for arrears of rent, until the litigation reached the Privy Council. Here the suit was from the beginning essentially a suit to recover arrears of rent due in respect of 1278 and 1279, and the question whether the plaintiff had made out a right to be paid rent at an enhanced rate for 1279 was only part of the larger question what was the rate at which the rent was due for that year." So in *Pundit Bhugwan v. Sheomungal*, (22 W. R., 256). The plaintiffs sued for arrears of rent of the years 1284, 1285, and also for the arrears of rent of the year 1286, the latter at an enhanced rate. The notice of enhancement was not proved, and the defendant insisted that the suit should be dismissed. Held, that though the notice of enhancement had not been proved, the plaintiff was not thereby precluded from the arrears of rent at the old rate—(*Ghunshyam v. Tara Prosad*, 1. L. R., 8 Cal., 465; 10 C. L. R., 447.)

Ground (a) of section 30.—This is substantially ground No. 1 of section 18 of Act VIII of 1869 (B.C.) and section 17, of Act X of 1859, with this

difference that for the ambiguous phrase "same class of raiyats" we have now "occupancy-raiyats," and for "in the places adjacent," we have "in the same village." This ground is to be read subject to section 31.

The term "prevailing rate" means the rate generally prevalent, or the rate paid by the majority of the raiyats in the neighbourhood—(Sadoo Sing v. Ramanugralal, 9 W. R., 83). "The word prevailing," observed in this case, Mitter, J., "used in section 17 must have some definite meaning attached to it. It means the rate generally prevalent, or the rate paid by the majority of the raiyats in the neighbourhood. Now the evidence of twenty raiyats (for that is the number referred to in the present case) simply showing that they paid their rents at the rate of Rs. 3 per bigha does not go to prove the *prevailing* rate, or the rate paid by the majority of the raiyats. I do not mean to say that all the raiyats in the neighbourhood are to be examined, and then the rate paid by the majority of them is to be found out. But I do mean to say that the evidence given must purport to show the rate paid by the majority; otherwise it cannot be said that the prevailing rate has been established. In the case before us, the Amin had examined thirty other raiyats who deposed that the rate of rent prevailing was one rupee per bigha, or in other words the same as the rate at which the special appellant has been hitherto paying his rent. Against the evidence of twenty raiyats deposing that they paid their rent at a particular rate, there was the evidence of thirty raiyats who deposed to a different rate already examined by the Amin, besides that of others whom he did not examine. I cannot understand how the fact of these raiyats having been subsequently served by the respondent with similar notices of enhancement can affect their eligibility as witnesses in the cause. Suppose that a village consists of a hundred raiyats, all belonging to the same class, and all holding lands of a similar description, and with similar advantages of situation; suppose also that ninety-one of these raiyats paid at the rate of Rs. 1 per bigha, and the remaining nine at the rate of Rs. 3 per bigha. Suppose then that the proprietor of the village, being desirous of enhancing the rents of the ninety-one raiyats above referred to, serves them with notices of enhancement, and institutes his suit against any one of them as a first experiment, the only ground of enhancement assigned being that the rate paid by him is below the prevailing rate, can it be said that the evidence of the ninety witnesses is to go for nothing, and that the prevailing rate must be found to be Rs. 3 per bigha upon the evidence of the nine remaining raiyats who pay at that rate? Such a proposition would be absurd upon the face of it. Similarly it might be argued that, where ninety-one raiyats are sued for enhancement of rent, the evidence of forty witnesses deposing simply that they paid their rents at a higher rate, will not establish a prevailing rate. Another interesting question may arise, *e. g.*, whether there may not be more than one prevailing rate? Under the General Clauses' Act (Act I of 1868), clause (2) of section 2, words in the singular shall include the plural. Therefore, though the word 'prevailing rate' is used in the singular, it may include the plural. Hence in a village consisting of a hundred raiyats, if forty pay rent at the rate of Rs. 3, and forty at the rate of Rs. 5, though the rent of none of the former might be enhanced to Rs. 5, because that would not be the prevailing rate, the rent of the remaining twenty raiyats who pay rent at the rate of Rs. 2 might be enhanced to either Rs. 3 or Rs. 5 as the circumstances will warrant, because both Rs. 3 and Rs. 5 will be the prevailing rates in respect of the twenty who form the minority. The rate claimed by the plaintiff must be such as is paid by the same class of raiyats for adjacent lands with similar advantages, and is the *prevailing* rate,—that is to say the rate paid by so large a majority of the same class of tenants for such lands as would justify one to hold the rate claimed to be the pre-

vailing rate. A Court cannot give a decree for enhanced rent at a certain rate without any evidence as to that being the *prevailing rate generally* paid and not only by five or six witnesses of the same class of raiyats as the defendant for lands adjacent with similar advantages—(*Dhunraj Koonwar v. Ooggar Narain Koonwar*, 15 W. R., 2). Clause (a) of section 31 makes another addition, *e. g.*, the prevailing rate shall not only be *rates generally paid*, but such rates *must* be paid at least for three years before the institution of the suit. The evidence of three putwaris who put in their *jummabundis*, showing the rates paid by almost all the raiyats, *i. e.*, the majority, was held sufficient to prove the “prevailing rate”—(*Pryaglal v. Brockman*, 13 W. R., 346.) The Judge ought not to take into consideration the report of an Amin in determining the prevailing rate in the neighbourhood, but should examine the witness himself—(*Tweedie v. Purno Chunder*, 12 W. R., 138). In fixing the prevailing rate of rent, it is an error to strike an average between the statements of witnesses on opposite sides; the proper plan is to ascertain on which evidence reliance can be placed—(*Rowshan Bibi v. Chunder Madhub*, 16 W. R., 177.) The adoption of an average rate from different rates given by several witnesses is not a correct mode of fixing the proper rate—(*Sumera Khatoon v. Gopallal*, 1 W. R., 58; *Audh Bihari Sing v. Dost Mohamed*, 22 W. R., 185). Where the ground relied on was the prevailing rate paid by the adjacent occupiers of similar land, and such ground could not be established by the probability or even certainty, that if the rents of the neighbouring occupants were readjusted, they would come to the rate claimed, such ground is not sufficient to make out that the rate claimed is actually being paid by the neighbouring raiyats—(*Brindaban v. Bisener Bibi*, 13 W. R., 107). Where different raiyats holding similar lands with similar advantages in places adjacent pay at different but higher rates than the defendant for lands of the same description and quality, and if a generally prevailing rate cannot be found, the currency of the different rates being so nearly equal as to make it impossible to say which is the prevailing rate, the Court is not in error in taking an average—(*Sheik Dina Gazi v. Mohini Mohan*, 21 W. R., 157). In a suit for enhancement of rent on the ground that the defendant pays at a lower rate than that paid by the neighbouring raiyats of the same class for similar lands, if it be found that the prevailing rate is higher than the rent paid by the defendant, though lower than the rate claimed in the plaint to be the prevailing rate, the Court ought to give a decree at the actual rates found to be paid by the neighbouring raiyats—(*Akul Gazee v. Ameenuddin*, 5 C. L. R., 41). In determining the enhanced rent under this section a Court cannot include *patwaris*, and other abwabs paid by raiyats in the neighbourhood—(*Burma Chowdry v. Sreenundo*, 12 W. R., 29). A claim to the *nirik* rate may be considered to be a claim at the *pergunnah* rate, that is the rate paid by the same class of raiyats for similar lands in the neighbourhood—(*Amritlal Bose v. Arbach Kazee*, 4 W. R., (Act X), 47). But a plaintiff who alleges as his ground of enhancement that the rates at which the defendant holds are lower than the prevailing rates in the neighbourhood, cannot ask for enhancement on the ground that the *pergunnah* rates are obsolete; or in other words words that the rates of the whole neighbourhood are too low—(*Sreeram v. Lakhan Majilla*, Marsh., 379; 1 *Boards Rep.* 116). *Pergunnah* rates are not necessarily prevailing rates—(*Kalee Churan v. Ratan Gopal*, 11 W. R., 571). The words “surrounding rates” are not tantamount to the ground of enhancement in clause 1, section 17, Act X—(*Bogoo Nath v. Ramjai*, 9 W. R., 292). In a suit for enhancement on the ground that the defendant pays a lower rent than that paid by the neighbouring raiyats of the same class for similar lands, the Judge, instead of deprecating what he considers a ‘fair rate,’ should find specifically

whether the rate claimed by the plaintiff is actually paid by the neighbouring raiyats of the same class for similar lands or what rate is so paid, and decide accordingly—(*Pelaram v. Nundo Kumar*, 6 W. R., Act X, 45). It is not enough for a Court to find generally that the plaintiff is entitled to an enhanced rate; there must be a distinct finding as to the ground on which he is so entitled—(*Gunga Narain v. Sharoda Mohan*, 12 W. R., 30). A decree should not give a plaintiff more than he claims, e. g., where homestead land was assessed in the plaint at Rs. 1-8, the Court cannot decree at Rs. 2 per bigha—(*Ghyrulla Mundle v. Kishore Nath*, 5 W. R., Act X, 60). This section does not say that in every case the rate of rent may be raised to the prevailing rate, but only that the rent should not be raised except on some one of the grounds specified. It must always be read with reference to the general provisions of section 5 (see sections 27 and 35 of the new Act), that the rent of a raiyat having a right of occupancy shall not be more than what is fair and equitable; and in considering what is fair and equitable, the raiyat should not be called upon to pay to the landlords what is in fact not rent, but the produce of his own labour and capital sunk in the land—(*Noor Mahomed v. Harri Prosunno*, Sp. W. R., Act X, 75). A plaintiff who sues for enhanced rent is bound to prove that the present rate is not fair and equitable—(*Hills v. Jender Mundle*, 1 W. R., 3). The words "fair and equitable" in section 5 mean, not the rate obtainable by open competition, but the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the places adjacent, where the customary rate had adjusted itself with reference to the increased value of the produce—(*The Great Rent Case*, 3 W. R., Act X, 29).

"In other respects this ground of enhancement has not presented any difficulties, and the cases do not show that, so far as it is concerned, any amendment of the law is very urgently required. The idea of a *perganna* rate of rent, a prevailing rate by the tenants of the same class within a certain tract of the country, has long been familiar to the people, and where such a rate is generally known and acknowledged, a landlord has seldom, in the absence of other disturbing circumstances to put a raiyat into Court in order to get him to pay rent according to this rate. The germ of dispute and litigation does not lie here. The landlord who seeks to put an individual raiyat on an equality with his brethren has public opinion generally in his favor, for human nature in Bengal, as elsewhere, is envious of an individual better off than the rest of the community, and takes pleasure in the assertion of the principle of equality when violated by the superior condition of a neighbour. It is when the landlord seeks to raise the rate for all raiyats, when all are threatened with a common misfortune that unanimity for self-defence, and combination against the general enemy, rule the village councils, and leave the zemindar no hope of success without some such coercion as the law permits"—R. C. R.

"We were unable to accept the proposal to abolish the prevailing rate as a ground of enhancement, inasmuch as this has, in one shape or another, been a ground of enhancement ever since the Permanent Settlement, and as it is the only means by which a landlord can remedy the effects of fraud or favoritism on the part of his agent or predecessor"—(*R. S. C. B. T. B. No. III, Gazette of India, February 21st, 1885*).

It is not of course sufficient for the Court to find what is the prevailing rate; it must also ascertain what is the prevailing rate paid by occupancy raiyats, or in the words of the old Act paid by occupancy raiyats, or in the words of the old Act by raiyats of the same class as the defendant. The mere

fact of a particular rate of rent having been decreed against two raiyats not having a right of occupancy is not enough to show that the rate so decreed was the rate prevailing in the neighbourhood—(*Surahutoonisa v. Gyanee Buktur*, 11 W. R., 142). It is essential that the prevailing rate shall be paid by occupancy raiyats and by raiyats with similar advantages—(*d R. J. P. J.*, 48 (Sv. 23). Sv. 136; *Purmanund v. Puddomoni*, 9 W. R., 349; *Woomanath v. Ashumbar*, 12 W. R., 475; *Mothuranath v. Nilmoni*, 13 W. R., 297). The perplexing phrase “raiyaats of the same class” of the old law has been done away with, though it referred obviously to occupancy raiyats. Raiyats having customary rights have, however, some advantages under clause (c) of section 31. Where, however, custom is not pleaded, there cannot be separate grades of raiyats within the general body of occupancy raiyats.

The old law had “in the places adjacent.” The Rent Law Commission substituted for them the words “in the vicinity,” and observed: “We think the proof will be facilitated by enlarging the area from which the materials for evidence may be taken.” The Bengal Tenancy Bill No. III, however, adopted the words “in the same village.” The Select Committee report: “In view of the dangers which are said by competent authorities to arise from the artificial manufacture of rates, and from the very wide interpretation given to the term “places adjacent,” we have somewhat modified the terms of the section, have limited enhancement to the rate ascertained to be the prevailing rate in the village, and have required that this rate should be determined with reference to the rates actually paid during a period of not less than three years before the institution of the suit”—(*S. B. T. B. No. III*). The effect of this change is that no enhancement will now be possible under this ground of the rates of the whole village by showing the prevailing rate of the neighbourhood; on the other hand if the majority of raiyats in the same village pay a higher rent, the raiyat will not be allowed to prove the prevailing rate of the neighbourhood against the prevailing rate of the village—See the definition of the word “village.” Compare the old law and the decisions; see 5 W. R., Act X, 70; 12 W. R., 138; 11 W. R., 571; 21 W. R., 157.

The rent of the whole village therefore cannot now be enhanced.

under this ground of the rates of the whole village by showing the prevailing rate of the neighbourhood; on the other hand if the majority of raiyats in the same village pay a higher rent, the raiyat will not be allowed to prove the prevailing rate of the neighbourhood against the prevailing rate of the village—See the definition of the word “village.” Compare the old law and the decisions; see 5 W. R., Act X, 70; 12 W. R., 138; 11 W. R., 571; 21 W. R., 157.

And there is no sufficient reason for his holding at a low rate.—This is an addition to the old law. One sufficient reason may be the caste consideration of the raiyat (see section 31 (c).) The jungleborri raiyats seem to have been specially in view of the Legislature. In *Chowdry Khan v. Gour Jana*, 2 W. R., (Act X) 40, Mr. Justice Campbell observed:—“When a raiyat simply brings jungle land into cultivation, then, after a reasonable period, he is liable to pay the full pergana rates of cultivated land. But if he has to do more than bring into cultivation uncultivated land; if the land which he originally received was not only uncultivated jungle, but was in its then state impracticable for cultivation—if it was salt land, which could only be made sweet by special works of the raiyat, or rock, which could only be made culturable by special labour—then I think that the raiyat who made those works, or expended that special labour, would be entitled to hold at exceptionally low rates. So, again, if, having received ordinary land, he converted it into land of specially high value, then I think he would not be liable to pay exceptionally high rates, but only the ordinary rates paid by land of the same quality, irrespective of the special character impressed on it by himself.”—(See *Noor Mahmed v. Hari Prosuno*, Sp. W. R., (Act X) 75; *Paramand v. Padmani*, 9 W. R., 349). So in *Huro Prosad v. Chundee Churum*, (I. L. R., 9 Cal. 505; 12 C. L. R., 251), the Court held that where land was let for the purpose of clearing jungle or other reclamation, and on this

ground a reduced rent is provided from the 1st few years, after which the full rent was payable, such rent was not liable to enhancement.

Rise in prices of staple food-crops (Ground b).—"The fourth ground of enhancement is that the value of the produce has increased. It appears to us that this ground of enhancement is altogether distinct from an increase in the quantity of the produce due to an improvement in the productive powers of the soil. We have in consequence entirely separated

The Rent Commission. these two grounds. In stating this fourth ground we have in the first place substituted the term "price," which is equivalent to money value for "value," which includes other value besides money value. We have thus made the language more precise without altering what we understand to have been the intention of those who framed Act X of 1859. The price of agricultural produce has increased enormously in these provinces during the last twenty or thirty years. This increase is due to two principal causes. In the first place, even while the relative value of the precious metals which are used for the coinage of a country remains the same, there is a constant tendency* for the money value or price of agricultural produce to rise as population increases and improvement progresses. The province of Bengal has been rapidly progressive in every way during the last century of peace and security. Population has increased. A large and still expanding export trade has brought the demand of other countries to bear upon prices in addition to the enlarged demand of the province itself. In the second place the coinage consists of silver, and the relative value of silver has been gradually decreasing. The price or money value of the produce has therefore risen. We are of opinion that the landlord should have a share in the increase of price due to the above two causes. It is not possible to separate the respective effects of these causes and so calculate how much of the increase is due to each. The landlord ought, however, according to our view, to participate in the benefit arising from each. The first cause, i. e., the general progress of the community, makes the land more valuable as a natural agent for the production of food. The increase of value, if not taken by the State—and the effect of the Permanent Settlement is that the State does not take it—must go to those whom the law allows to keep all that interest in land which constitutes property in land. Now the persons, who in these provinces have this property in the land under the existing law, are the zemindars and the raiyats, not the raiyats only. Therefore the zemindars, having a share in that complete interest which constitutes property, ought to have also a share in that increase of value which is an accession to that interest. The effect of the second cause is to diminish the value of the rent payable in silver in relation to all commodities, which the landlord can obtain for the money which he receives as his rent. This money, therefore, represents a smaller share of the produce than it did before the relative value of silver fell. It is but equitable, therefore, that the money rent of the landlord should be increased so as to make it represent a share of the produce equal to

* Political economists lay down the proposition that, while the rate of profit and interest has a downward tendency in a progressive community, rent (i. e., in their sense of the term rent) on the contrary tends to rise incessantly—that in fact all progressive wealth and population tends to a rise of rent—See Mill's Political Economy, Vol. I, p. 386; *Systems of Land Tenure in various countries*, p. 221, where capitalist farming prevails; any fall in the usual rate of profit and interest must operate directly to increase rent; but apart from this cause rent increases in a progressive community. An advancing population has a tendency to create a larger demand for food and the price rises in consequence.

what it represented when the rent was originally fixed. Then there are other considerations. The benefit accruing from the operation of the first cause is limited by the quantity of the produce which the raiyat sells or barter away. In respect of the portion retained for consumption by himself, his family and his cattle, and for seed, there is no direct benefit from the rise in price, because this portion does not come into the market. Here the first cause differs from the second, and it differs also from the third ground of enhancement, under which the excess quantity of produce obtained from the increased productive power of the soil represents so much clear benefit. From this analysis it will appear that the component elements of this ground of enhancement are sufficiently complex; and looking at the above considerations, it is not very easy to say how the increment arising from increase of price ought to be divided so as to make the division fair to both parties.

"Here, as in the case of the third ground, it is possible to conceive that the increase of price may be brought about (1) by the agency or at the expense of the raiyat, or (2) by the agency or at the expense of the landlord, or (3) without the agency or expense of either. In the first case, as the law now stands the rent of the raiyat is not liable to enhancement. He receives the full benefit of the increase in price which he has himself brought about. That is the effect here also of the words 'otherwise than by the agency or at the expense of the raiyat,' and we do not propose to alter this. At the same time it is not easy to suppose a case in which the raiyat could effect an increase in the price of the produce solely by his own agency or at his own expense. In so far as better prices may be due to improved means of communication, which have been effected by the road cess or public works cess funds, we have provided that the raiyat shall pay so much less enhanced annual rent as is equal to the annual sum which he has contributed to these funds. In the second case, or where the increase of price is due entirely to the zemindar's agency, or has been brought about altogether at his expense, it appears to us, on the whole, to be reasonable that he alone should receive the entire benefit. A case of this sort might occur where a zemindar had opened a new *hat* and improved the means of communication between it and the lands of his estate. In the third case, which is by far the most common, the case, that is, of an increase of price brought about by neither the zemindar nor the raiyat, but by general causes, the reasoning used above (section 55) in respect of the similar case arising upon the third ground of enhancement appears to have equal application. Having given the whole subject in its diversified details what consideration we have been able, a majority of us think that the fairest general rule here also will be to divide the increment equally between the landlord and tenant. Messrs. Mackenzie and O'Kinealy would in this case, as well as in the analogous case under the third ground of enhancement give two-thirds of the increment to the raiyat and the remaining one-third to the landlord.

"As to the period of past time between which and the present the comparison should be instituted, and as to the causes of the increase being not merely temporary or casual, the remarks above made upon the third ground of enhancement apply. Then as to the markets, the prices of which should govern, we have provided that the prices in the locality or at the usual markets are to be taken. There ought to be sufficient evidence of these prices procurable from the local *zamindars* and their books or from other sources. We have further facilitated the proof by providing for the preparation and publication of annual official price lists, the object and use of which we shall explain hereafter.

"The next question which has engaged our attention in connection with this part of the subject is the very important one of the species of produce which

shall be taken for the calculation of prices. Shall these prices be calculated for all the crops actually grown on the lands, as well for special crops requiring special care and cultivation, as for the ordinary food-crops of the district? During the period antecedent to British rule it was usual to vary the rent with the crops cultivated. Section 56 of Regulation VIII of 1793 enacted that "where it is the established custom to vary the pottahs for lands according to the articles produced thereon, and while the actual proprietors of land, dependent talukdars or farmers of land and raiyats in such places shall prefer an adherence to this custom, the engagements entered into between them are to specify the quantity of land, species of produce, rate of rent, and amount thereof, with the term of the lease and a stipulation that in the event of the species of produce being changed a new engagement shall be executed for the remaining term of the first lease, or for a longer period if agreed on; and in the event of any new species being cultivated a new engagement with the like specification and clause is to be executed accordingly." It can well be understood that a despotic Government or its more despotic subordinates observed carefully any circumstances that would enable the cultivators to pay more than had previously been obtained from them. Where the share of the State was taken in kind, a less proportion was always accepted for special crops in consideration of the greater care and expense necessary to their production. Where the share of the State had been commuted to a money-payment, very high rates were imposed on the lands on which special crops were grown. These rates were too often regulated more with reference to the aggregate value of the gross produce, which was very considerable, than upon a due allowance for the cost of production, which was a very much larger item in proportion than in the case of ordinary crops. In reasonably good years the raiyat was able to pay and make a good profit; then came a year of failure, it may be when he had made a larger venture than usual, and the little capital vanished, while the high rates had to be paid, and perhaps the *mahajan's* assistance had to be called in for this. "The memory of the year of failure survived, kept green by the *mahajan's* long surviving claim, while the years of success from which little or nothing was saved were soon forgotten. It thus happened that the exaction of very high rates for fields devoted to special cultivation discouraged and retarded agricultural improvement. It may be well to draw here a distinction between higher rates for superior land capable of producing superior crops and therefore suited for these special crops—such rates being paid without direct reference to the particular crops actually produced from year to year—and higher rates assessed with direct reference to the crops annually grown. The latter are sure to run much higher than the former, and in a bad year the loss and the cause of it are felt more distinctly. This distinction and the bad effects of levying a high rate directly on the crop were understood many years ago. As early as 1792 the Government wrote as follows in the Revenue Despatch of the 12th December of that year: 'Apprehending that the present great demand for sugar and the consequent rise in the price of it might induce some of the landholders to exact from their raiyats an enhancement for the ground appropriated to the cultivation of the cane; and, as such short-sighted policy would have discouraged the extension of the cultivation of it, and consequently prevented the establishment of a trade in sugar between this country and Europe, we thought it advisable to issue a notification to the landholders prohibiting any enhancement of the rent of the sugarcane lands upon the ground of its being repugnant to the usage of the country as well as detrimental to their own interest and that of the State at large.' We find the Directors writing out in 1837 to the following effect: 'It is the productive power of the land, and not

its actual produce, that should be taken as the guide in making the assessment. By this mode the best description of encouragement is given to the cultivator to extend cultivation and raise crops immediately beneficial and profitable to himself, and such a system, we have on a former occasion observed, and are still of opinion, would not ultimately be found detrimental to the interests of the State.' We do not therefore propose to interfere with any existing classification of lands based on their superior quality, or capability of producing special crops, but we think that, in regulating enhancement of rent on the ground of rise of prices, account should be taken of the ordinary staple crops only. A different rule would, in our opinion, tend to discourage the cultivation of new and valuable species of production, and so prevent agricultural improvement. By allowing the Board of Revenue to declare from time to time what shall be taken to be staple crops for particular areas, an opportunity will be afforded of making any new crop a staple as soon as its cultivation has been thoroughly and generally established. As to special crops, such as betel leaf, tobacco, sugarcane, and such like, we think that as they are grown only occasionally or in small quantities, and require particular attention and involve special expenditure, they ought not to be considered in settling enhanced rents. We may further observe in support of this view that, in commuting the tithe into a money payment in England, staple crops only were taken into account, the staples selected being wheat, oats, and barley." (R. C. R. Vol. II, pp. 30 to 33).

Enhancement on the ground of prices would be greatly facilitated by the preparation of authoritative price lists by the Local Government. It should be explained that the price lists of staple-food crops are to be taken simply as indicating a general rise or fall in prices, and without any reference to the particular crop grown on the land, the rent of which is in dispute; and our intention is that the price list should be worked out very much on the principle on which the commutation of tithes according to the average prices is worked out in England as explained at page 250 *et seq* of Mr. Justice Field's Digest. It has been urged that in applying the proportion rule in the case of prices, some deduction should be made to cover the effect of these increased prices on the cost of cultivation. We are, however, content for the present to leave the protection of the raiyat in this respect to the other restrictions on enhancement, especially to section 48, which provides that the Court shall not in any case decree an enhancement which appears under the circumstances of the case to be unfair or inequitable. But the point will receive further consideration when the alterations made in this chapter have been subjected to public criticism."—*S. on B. T. B. No. II, Gazette of India, April 12th, 1884*).

"The only other amendments in the chapter which appear to call for special notice are as follows:

The Select Committee
on B. T. B. No. III.

(a) We have required Courts, in dealing with claims to enhancement on the ground of a rise in prices to take decennial periods instead of quinquennial periods for the purposes of comparison, except when, owing to the absence of price lists or any other cause, they find it impracticable to take such periods, in which case they may take any shorter periods;

(b) We have amended section 39 so that the price lists prepared under it shall be merely presumptive evidence instead of being conclusive, as provided in the corresponding provisions of Bill No. II. The Bengal Government are of opinion that their arrangements are not at present so perfect as to justify these lists being made conclusive evidence.—(*S. B. T. B. No. III, Gazette of India, February 21st, 1885*).

"Tithes were formerly paid in kind, i. e., the person entitled to the tithes received the tenth of the crop. This system was found

Mr. Field's Digest.

to be vexatious in the extreme, and productive of disputes and litigation, just as the system now in force in parts of Behar produces constant irritation and oppression. It was finally decided to put an end to a source of so much bitterness and want of charity, and the following rules were laid down for the convenience of tithes into a money payment:—(1) Find the gross average money value of the tithe of a parish or district for seven years ending on Christmas Day, 1835. (2) Apportion the amount of that value upon the lands of several tithe-payers. (3) Ascertain how much corn could be purchased with such amount; one-third of it to be laid out in wheat, one-third in barley, and one-third in oats at the average price ascertained by the weekly official returns of the price of corn for the seven years preceding 1835. (4) In every future year, make payable the price of the same quantity of wheat, barley and oats at their average prices, founded on a like calculation of the official returns for the seven years ending at each preceding Christmas. These official returns are, it may be mentioned, published in the *London Gazette* in January of every year, and show the average price of wheat, barley and oats for the preceding seven years.

"In applying this principle to money-rents in Bengal, we would not have to go through all the processes required by the above four rules. Let us suppose that the rent of a raiyat's holding is Rs. 20, and that the price of paddy in 1870 is Re. 1 per maund. The money-rent thus represents 20 maunds of paddy. Let us then suppose that the price of paddy steadily rises during the ten years from 1870 to 1880. To simplify the calculation for the purpose of illustration, we shall suppose the price to rise one anna per maund each year. We shall then get the following:—

						Rs. As.
For 1871	twenty	maunds	of paddy	at Rs. 1-1	give a rent of	... 21 4
" 1872	"	"	"	" 1-2	" "	... 22 8
" 1873	"	"	"	" 1-3	" "	... 23 12
" 1874	"	"	"	" 1-4	" "	... 25 0
" 1875	"	"	"	" 1-5	" "	... 26 4
" 1876	"	"	"	" 1-6	" "	... 27 8
" 1877	"	"	"	" 1-7	" "	... 28 12
" 1878	"	"	"	" 1-8	" "	... 30 0
" 1879	"	"	"	" 1-9	" "	... 31 4
" 1880	"	"	"	" 1-10	" "	... 32 8
Total rent of ten years						... 268 12

"This gives an annual average of Rs. 26-14, to which the rent may be enhanced. The only thing necessary in order to the application of this principle to the enhancement of existing rents at decennial intervals is to ascertain the average yearly price of paddy: and this might be done yearly by the Collector of each district, either for the whole district or for divisions thereof, between which such a difference may exist as to render a general price-rate inequitable. Trade and the means of communication are not sufficiently far advanced to admit of a general price-rate for all Bengal. The Collector might give due notice of the average price which he proposed to adopt, and persons concerned therein might be allowed a month to object and show a more correct average. The Commissioner and the Board of Revenue might have a power of revision: and the

average prices for all districts should be finally published in the *Gazette*. The selection of the staple crop or crops to be used for the calculation, and the alteration of the staples from time to time would naturally be vested in the Revenue authorities. The period after which revision should take place might, at first starting, be made three or five years; and it might be possible to obtain prices for a few back years so as to bring the rule more quickly into operation. In the illustration I have taken the price of paddy as Re. 1 a maund in 1870; but of course the price, with which the rule should be started, ought to be ascertained upon an average of a certain number of years. The great advantage of this principle would be that it, would not interfere with existing relations; and therefore its introduction would not stir up a vast mass of litigation, disturbing men's minds and exciting their bad passions. It would, moreover, be gradual in its operation, giving full scope to the operation of a rule carefully followed in Settlement Proceedings, and founded on the equitable considerations to which I have already adverted—the rule, namely, that forbids too sudden a rise, as likely to involve, if not ruin, men to whom sufficient time is not allowed to adjust their circumstances to their diminished powers of expenditure. It will be understood that the principle, of which I am here speaking, applies only to enhancement based upon an increase in the value of the produce, a rise of the price of produce due to the operation of *general* causes. It would not interfere with or supplant the present first and third grounds of enhancement (*ante*, p. 233) or the remaining portions of the second ground, as to which some observations have been made above (*ante*, pp. 235–238). If it were thought advisable to convert the rents paid in kind in Behar into money-rents, the same rule could be applied, only in this case a preliminary step would be necessary, *viz.*, to fix the money-rent, which is the first factor in the calculation, by ascertaining upon an average of a certain number of years the value of the produce delivered as rent.—*Field's Digest*, pp. 250–253.

Decision under the old Act applicable to this.—For the rule of proportion and practical mode of striking rates under this ground, see section 32. Claims to enhancement on the basis of “increased produce” and “increased value of produce” are inconsistent and indeed incompatible with one founded on an inequality between the rent paid by a tenant on the estate and that paid by a tenant on a neighbouring estate—(*Sreesh Chunder v. Assimonissa*, 7 W. R., 234). The statement of inconsistent grounds does not invalidate a suit for enhancement, if the raiyat has not been in any way prejudiced by it, and has taken no objection as to the inconsistency in the lower Courts—(*Ramruttun v. Prosunno Nath*, 20 W. R., 203). But if a raiyat is holding *below the rates* paid by his neighbours, and in consequence of the *increase of the value of the produce* those rates are themselves too low, a zemindar may be entitled to the benefit of both the grounds of enhancement in the same suit—(*Thakurani v. Bissesvar*, 3 W. R., Act X, 29,) per Norman, J. A claim to enhancement of rent on the basis of increased produce, and one that of increased value of produce, are not inconsistent and incompatible—(*Gopee Nath v. Ramburi*, 9 W. R., 476). The rule of proportion is not applicable where the rates between the present value of the produce of the soil and the former value at the time of the original taking cannot be ascertained—(*Jadub Chandra v. Etbari Luskar*, 3 W. R., Act X, 166.)

The increase, however, in the value of the produce must be an increase “in its natural and usual value in ordinary years; the accidental and exceptional high prices of a particular year in consequence of drought and scarcity, cannot be treated as a measure by which rent is to be adjusted. A tenant takes land, not with refer-

The increase must be natural.

ence to the exceptional high prices of a past year, but with reference to the prices he may reasonably expect to realise for the crops he will raise in succeeding years"—(*Bhagruth v. Mahsoop*, 6 W. R. (Act X), 34). The increase in the value of the produce must be a permanent one,—that is, a steady and normal increase, and not one that fluctuates in a violent and uncertain way, and is affected by extraordinary causes not likely to last—(*Thakorani Dasi v. Bissesar*, 3 W. R., Act X, 142.)

Increase of productive powers.—Grounds (c) and (d) are subject to sections 33 and 34 of the Act. The increase does not mean the capacity for realising a higher rent for building or other purposes; but an increase of the productive powers of the land itself—(*Bissesar v. Woomachurn*, 9 W. R., 122; *Kenyah Chyeman v. Jan Ali*, 1 W. R., 46.) Where a considerable portion of a town had been carried away by the Ganges, and the value of the land has consequently increased, it was held that a rise in the value of the land from such a cause was not an increase in the productive powers of the land as contemplated by this section—(*Khondkar Abdur Rahaman v. Wooma Churan*, 8 W. R., 330.) The increase of the value of land by reason of the existence of a distillery or of a ropeyard is not an increase in the productive powers of the land within the meaning of this section—(*Brojonath v. Stewart*, 16 W. R., 216; *Madun Mohun v. Stalkart*, 17 W. R., 441). A casual increase in the fertility of the land is not a ground for a permanent enhancement of rent—(*Kisto Mohun v. Huri Sunkur*, 7 W. R., 235). The increase must either be permanent or likely to last for a considerable time—(*Khajeh Abdool v. Bluttoo Sheik*, 22 W. R., 350). An enhancement of rent can be had under this clause where the increase has resulted from additional productiveness in the soil arising out of fertilising deposits, or from increased facilities for disposing of the produce, arising out of the construction or protecting of embankments, or the introduction of railways, or the rise of new markets, or the generally increased facilities of communication which are caused by the construction of ordinary metalled roads, &c.—(*Poolin Bihari v. Watson & Co.*, 9 W. R., 190, F. B., per Seton Karr, J).

The old section had "*otherwise than by the agency, or at the expense of the raiyat.*" For "improvements" see sections 76 to 84.

Improvement by landlord. It is not sufficient to show that the productive power of the land has increased; the landlord must also show that the increase has been brought about "by improvements made by himself or by fluvial action." Where a raiyat has dug a tank for public use, and the garden he rented had been rendered productive by the exertions and outlay of the tenants, the land was held not liable to enhancement—(*Sreeram v. Lakhman Majilla*, Marsh. 379; 2 Hay, 427). On the other hand where tenants had held land for some 25 years at rents much below the prevailing rates, it was held they were not entitled at the end of that time to plead the expenditure of their own capital and labour as against the landlord's claim to enhanced rent—(*Prosunno Kumar v. Radha Nath*, 7 W. R., 97). The fact is that when enhancement is sought under ground (a), the questions of improvement and costs of cultivation &c., do not intervene except so far as may be brought to bear upon the ground under section 35. Where the crops had been deficient in quantity, and owing to the care and labour of the raiyat, they had increased in value considerably above that of former years, the raiyat was entitled to set off such against a suit for enhancement—(*Shoudamini v. Haran Chunder*, 6 W. R. (Act X), 103). Where a raiyat had taken lease of some land covered with jungle at a low rent, and had afterwards cleared the jungle and made the land in an orchard, it was held that the landlord could not enhance the rent to the rate paid for other

orchards in the neighbourhood, inasmuch as the improvements had been effected by the exertion and at the cost of the tenant. It is not

Conversion of an arable land into an orchard.

of course meant that a raiyat who takes jungle land is to hold it for ever at jungle rates. When he simply brings jungle land into cultivation, he is liable, after a reasonable time, to pay the full pergunnah rates for cultivated land; but if the land which he originally received was not only uncultivated jungle, but in its then state impracticable for cultivation; if, for instance, it was salt land, which could only be made sweet by special works of the raiyat, or rock, which could only be made cultivable by special labour, then the raiyat who made these works, or expended that labour, would be entitled to hold at exceptionally low rates. So again, if having received ordinary land and converted it into land of specially high value, he would only be liable to pay the ordinary rates paid for land of the same quality, irrespective of the special characters impressed upon it by himself—(*Chowdry Khan v. Gour Jana*, 2 W. R. Act X, 40; *Golamali v. Babu Gopal Lal*, 9 W. R., 65). So where a tenant erects distillery, the land is not liable to enhancement—(*Braja Nath v. Stewart*, 8 B. L. R., App. 51; 16 W. R., 216). Under the old law where the productive powers had increased by reason of the Government having erected an embankment, the land was liable to enhancement—(*Jadub Chundra v. Etware Luskur*, Marsh., 498.) It would not be so now under the present law, because the improvement by the Government is not an improvement made by the landlord or by fluvial action. When a defendant allows that the

Burden of proof.

productive powers of the land have increased, it is still incumbent on the plaintiff to show that the agency which effected the increase was not that of the raiyat, or under the present law was that of himself or fluvial action. "When," observed the Chief Justice, "a defendant comes into Court, and the Court asks him 'what do you say to the plaintiff's claim?' and he says 'I admit that the productiveness has increased but not otherwise than by my agency,' such an admission must be taken altogether. So it is in the case of a written statement. A written statement put in by a defendant is not a plea by way of confusion and avoidance; it is the statement of the grounds of his defence, and he must verify the statement. If you read a man's answer you must take the whole admission together. Taking the whole admission together in this case, the defendant says 'that the productiveness has increased, but not otherwise than by my agency,' and the plaintiff then, has to prove his case. The general rule of evidence is that if in order to make out a title, it is necessary to prove a negative, the party who traverse the title must prove the title. The plaintiff alleged the right to enhance on the ground that the productiveness had increased otherwise than by the agency of the raiyat. I am of opinion therefore that the *onus* lay on the plaintiff to prove the ground of his right to enhance, namely, that the productiveness of the land had increased otherwise than by the agency of the raiyat"—(*Poolin Behari v. Watson*, 9 W. R. 190.) The change of words is significant in the new section, and the *onus* of proof now decidedly is upon the landlord.

In a suit for enhancement of rent, the defendant pleaded that the land was used solely for fruit trees, and that those trees were originally planted by the defendant; that consequently, any increase in the value and productiveness of the land in consequence of the growth of trees must be attributable to the agency of the defendant, and therefore by section 18 of Act VIII of 1869 (B.C.), such increase would be no ground for enhancement: Held that this was bad defence—(*Obhoy Chunder v. Radha Bullubh Sen*, 1 O. L. R., 549). The Court (Garth, C.J., and Birch, J.) said: "It is in point of fact untrue that the increased productiveness of an orchard by reason of the growth of the fruit trees is due to the agency of

the person who first planted them. After the first expense of preparing the land, and planting and nurturing the young trees has been incurred, the increase in the productiveness of an orchard depends probably far less upon the labour and outlay of the tenant than land used for the ordinary purposes of agriculture. The trees may require a certain amount of care and attention from time to time, but their growth and productiveness depend far more upon the quality of the soil and the fertilizing influence of the seasons, than upon the labour of man. It is quite right of course that in settling the rent of land which is let for the purposes of an orchard, a due allowance should be made to the tenant to cover the cost of his original outlay in the way both of labour and capital; but after such allowance has been made, there is no reason why the rent of the lands used for orchards should not be liable to enhancement or abatement from time to time, in the same way as lands used for other kinds of culture."

In a suit for enhancement of rent, bare proof that the productive powers of land in suit have been increased by the agency, or at the expense of the defendant or his ancestor, is not sufficient to exempt the defendant altogether from enhancement. In such a case, where the value of similar lands in the same locality, but not sharing the special advantages resulting from works or improvements erected or effected by, or at the expense of the defendant or his ancestor, has been increased by natural causes, it must be assumed that the lands of defendant, owe their increased value to that extent to natural causes, and are to that extent liable to enhancement—(*Tekait Churamba v. Dunraj Roy*, I. L. R., 5 Cal., 56.)

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

Rules as to enhancement on ground of prevailing rate.

(a) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the riyat and the prevailing rate found by the Court;

Shall have regard to.—This in fact widens the field of consideration of the Courts to a dangerous extent: "Every lawyer knows that if, into a definition of the ground on which an enhancement is to take place, you incorporate a number of things which the Courts may have regard to, you make those things so positively a part of the definition that in an appeal on a point of law to the High Court, if the whole of the matters contained in the definition have not actually been found on evidence, the case will fall to the ground. I fear it will be exceedingly difficult for a Court to conduct an investigation in this way, and that there will hardly be a case, which will not be capable of being upset on appeal to the High Court." (*The Hon'ble Mr. Evans in Council.*)

Rates generally paid.—See "prevailing rate," *ante*, p. 163; "Generally paid" means paid by the majority of occupancy riyats. What is meant by the words "unless there is substantial difference between the rate paid by the riyat and the prevailing rate found by Court"? Should an average be struck? See the notes under ground (a) of section 30. In *Audh Bihari v. Dost Mahomed*, 22 W.

R., 185, it was held that it is not allowable to the Court to strike an average of the rates of rent. But in *Shaik Dena Gazee v. Babu Mohini Mahun*, 21 W. R., 157, it was held that if a generally prevailing rate cannot be found, the currency of the different rates being so nearly equal as to make it possible to say which is the prevailing rate, the Court is not in error in taking an average. So in *Tikaram v. Mrs. Sandes*, 22 W. R., 335, it was held that, although the landlord may not give evidence as to the rate of rent payable by tenants of the same class, &c., yet if a comparison be made with rates paid for lands of a somewhat better quality and a proper enhanced rate awarded, it will be in conformity with the spirit of law.

"As long as we preserve the words of the present law 'the prevailing rate' and not the average rate, the rulings of the High Court which prohibit the striking of an average except to very small extent in very special cases, would equally apply to the present section; and there is nothing unfair in giving a direction that the Court should look to the prevailing rates. * * * * Say, there are two rates, one of Rs. 5 and one of Rs. 2 merely to strike an average between the two will not be in compliance with either this Act or the old law. But I do think that the class of judgments on which the Judge says—'This man is found to hold at Re. 1; the claim is to have his rent enhanced up to Rs. 2 on the ground of the prevailing rate; and there is a great deal of contradictory evidence as to what the prevailing rate is. I doubt the evidence which makes it out to be Rs. 2, but I find that, except in isolated cases, land of this description is never held under Rs. 1-8; therefore, I shall be safe in finding that the prevailing rate is not less than Rs. 1-8.' That is the sort of way in which the Courts have frequently given judgments in regard to these matters upon discrepant evidence. And I think rightly so." (*The Hon'ble Mr. Evans in Council.*)

Under the North-West Provinces Rent Act, XVII of 1873, "the prevailing rate is determined by taking an average rate paid for each class of land of similar quality with similar advantages, after deducting, the fields which pay an abnormally low rate," but the Famine Commissioners reported that the result was disastrous to the raiyats.

- (b) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rules made under section 392 of the said Code;

The following notification has been published with reference to this clause :

"Under section 392 of Act XIV of 1882, the Lieutenant-Governor has been pleased to make the following rules as to the persons to whom commission shall be issued under the Bengal Tenancy Act.

"Whenever, under sections 31 (b) and 158 (2) of the Bengal Tenancy Act, a Court directs that a local enquiry be held under Chapter XXV of the Code of Civil Procedure, the commission shall be issued to such person, not being below the rank of an Assistant or Deputy Collector, as the Collector of the District may, from time to time, select for the purpose.

"The Court shall issue a precept to the Collector requiring him forthwith to nominate a fit person as above, to conduct the enquiry, and the commission

shall be issued to the person so nominated." * (*Cal. Gaz. 4th November, 1885, 988*).

No Commission can then issue under this section to pleaders and the Civil Court Amin. The investigation should be made by the revenue-officer personally, and he cannot transfer the commission to an officer of his.

The practice of finding the prevailing rate by local inspection of the Civil Court Amin has always been discouraged. "I wish to remark," observed Mittor, J., "that a practice has been fast growing by which Amins are made the real judges of important questions of law and fact, which it is the duty of the Court itself to determine. Local investigations ought to be restricted to points which really require some local inspection for their elucidation. It is absurd to suppose that the Legislature intended that in every case for enhancement an Amin ought to be deputed to enquire into and report upon the rates at which the enhancement is to be made, and the mischievous consequence of acting upon such a supposition are painfully manifest in the present case. * * * I think it to be a manifest departure from the intention of the Legislature to allow witnesses to be examined out of Court by Amins; except with reference to such points for the determination of which a *local investigation* is legitimately required. It is of the utmost importance to the ends of justice to insist upon the examination of witnesses in open Court and by the Court itself. This should always be observed as a general rule by which all Courts are bound, and any deviation from this rule ought not to be permitted, except in cases in which the Legislature has expressly sanctioned it, as for instance, where witnesses are to be examined by Commission, or where an Amin deputed to hold a local investigation thinks it necessary to examine witnesses on the spot with reference to such matters as fall within the legitimate scope of the enquiry entrusted to him"—(*Shadoo v. Ramanugra*, 9 W. R., 83). "So in *Mr. James Tweedie v. Purno Chunder*, 12 W. R., 138, Sir Barnes Peacock remarked: "It appears upon that report of the Amin that the defendant having called witnesses named in the report, the Amin made enquiries in the neighbourhood, and from what he learnt, the rates were such as he found them to be, and not as stated by the defendant's witnesses. Witnesses both for the plaintiff and defendant were examined; but the Amin did not give credit to the defendant's witnesses on account of something he heard in the neighbourhood. It appears to me that when the defendant in his grounds of appeal contended that his witnesses had proved certain rates to be the rates of the village, the Judge had no right to take the Amin's report, which got rid of the evidence of those witnesses by the statement made in conversation, probably in the absence of parties; and, although the defendant had not objected to the Amin's report before the Deputy Collector, the Judge ought to have examined the defendant's witnesses, and decided whether they did or did not make out the allegations in the defendant's ground of appeal."

- (c) in determining under this section the rate of rent payable by a raiyat, his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom.

Section 20 of Act XVIII of 1875 (North-Western Provinces Rent Act) runs as follows: "In determining under this chapter the rate of rent payable by any tenant, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining such rate; and whenever it is found that by local custom or practice, any class of persons by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice. *Illustration* :—"The Judge finds that similar raiyats pay those rates for similar lands, and defendant admits that those other raiyats with whom he is compared are raiyats, with rights of occupancy as he is. He is unable to show that *according to the custom of the village*, there are any separate class of raiyats within the general body of occupancy raiyats, and therefore we must consider the general body of raiyats with rights of occupancy to be the same class of raiyats within the meaning of the law, although some may be more and some less ancient." The following illustration (b) was given in the Rent Commission Bill to the enhancement section: "A is in possession of its holding which has descended to him from his great-grandfather who held it at the time of the Permanent Settlement. B was let into possession of his holding 20 years ago. There is evidence that the descendants of raiyats, who were in possession at the time of the Permanent Settlement, *customarily* hold at rates less by four annas in the rupee than raiyats who have come into possession at a later period. A and B are not raiyats of the same class." This illustration, though not fully applicable, now shows that a very wide range will be given to local customs. See I. L. R. 9 Cal., 505; 12 C. L. R., 251.

- (d) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

This need not have been provided for, because in ground (a) of section 30, the land should be of a similar description and with similar advantages. Now if the prevailing rate has been established on account of the landlord's improvement, the land which is subject to that rate must have superior advantages than the land of which the rent is sought to be enhanced.

32. Where an enhancement is claimed on the ground of a rise in prices—

Rules as to enhancement on ground of rise in prices.

- (a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;
- (b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

- (c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (a), the Court may, in its discretion, substitute any shorter periods therefor.

"We have required Courts, in dealing with claims to enhancement on the ground of a rise in prices, to take decennial periods instead of quinquennial periods for the purposes of comparison, except when, owing to the absence of price-lists or any other cause, they find it impracticable to take such periods, in which case they may take any shorter periods." (S. C. R. B. III.)

"Formerly it was necessary for the landlord to prove to the Court when the rent was last fixed, in order to be able to enter into any comparison at all. The Court may, under this Act, take any period during the currency of the rent that may be equitable and practicable for comparison. As a rule, in order to eliminate the effect of special seasons, decennial periods will be taken, but the Courts may, if necessary, substitute shorter periods. In order to facilitate the comparison, the Local Government will have to draw up, from the materials which are available to a certain extent, for the last 20 years, statements of past prices, and in future to record prices accurately, publish them for criticism, and finally after revision, publish statements of annual average prices."—See section 39 *post*. (*The Hon'ble Stewart Bayley in Council.*)

Decennial Period.—As to the rule of proportion under the old Act and the mode of supplying it, see notes under section 24, pp. 13—138 *ante*.

The rule of proportion prescribed by the Great Rent Case was: "The old rent must bear to the increased rent the same proportion as the former value of the produce of the soil, calculated on an average of three or five years next before the date of the alleged rise in value bears to the present value." This rule is certainly modified by the new rule of proportion given in this Act which will now be the measure of enhancement in ordinary cases; one-third of the difference between the two rents shall however be the *maximum* limit. The modifications are these: (1) The application of the rule is now limited to *money rents* and enhancement on the ground of a *rise in prices*. (2) The periods between which a comparison is to be made are *decennial periods* instead of periods from three to five years. (3) In the Great Rent-Case no account was taken of *increase of cost of production*; a deduction of one-third of the increase of price is allowed by the new rule in order to cover this. (4) The new rule applies to all *money rents*; the old rule was limited to customary rents, *i. e.*, rents fixed according to the rate commonly payable by the same class of raiyats for similar lands in the places adjacent, and representing a share of the gross produce calculated in money—(B. L. R. F. B., 202; 6 W. R., Act X, 34; 7 W. R., 94, 144; 9 W. R., 348; 6 B. L. R., Ap. 122.)

Reading this section with section 30, ground (b), some commentators have been upset by the words "*during the currency of the present rent.*" The confusion of their ideas has arisen from an inability to distinguish the grounds of an enhancement from the manner in which the enhancement is to be adjusted. Section 30 (b) gives the grounds, and the present section gives the mode of adjustment. Because the grounds of enhancement have arisen during the currency of the present rent, it does not follow that the adjustment or assessment is to be confined to the currency of the present rent. The assessment may be made by comparing the rise of prices during the currency of the rent with the rate of the prices of the previous period. In fact this section leaves the comparison of the rates entirely at the discretion of the Court; and a comparison of the decen-

nial rates of prices during the currency of the period is an absurdity. The comparison must be made with a period which adjusted the present rent, i. e., which preceded it.

Reduced by one-third.—This deduction is allowed in consideration of the increased cost of cultivation.

"We are of opinion that the tendency in this country of the cost of cultivation to increase is in a higher rate than prices. So far as the labour is done by the cultivator's family or by labourers paid in grain (as is mostly the case in India), no benefit under this item can accrue to the cultivator from increase of prices. On the other hand, as population and prices have increased, pasturage has diminished; cattle are dearer to buy, dearer to keep, and less remunerative; manure is dearer, and so is fuel; and all these elements have to be taken into account. The Local Government proposed to deduct one-half for the increase of prices to cover the increased cost of cultivation; we recognized the impossibility of asking the Courts to solve the hopeless problem of increased cost in each case, and found it necessary to draw an arbitrary line. We have drawn it one-third." (S. C. B. III.)

33¹(1). Where an enhancement is claimed on the ground of a landlord's improvement—

Rules as to enhancement on ground of landlord's improvement.

- (a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;
- (b) in determining the amount of enhancement the Court shall have regard to—
 - (i) the increase in the productive powers of the land caused, or likely to be caused by the improvement,
 - (ii) the cost of the improvement,
 - (iii) the cost of the cultivation required for utilizing the improvement, and
 - (iv) the existing rent and the ability of the land to bear a higher rent.

33 (2). A decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

Improvement registered.—See section 80 and notes *post*.

In *Huro Prosad v. Wooma Tara*, 2 W. R. (Act X), 12), it was held that a landlord is not entitled to enhancement on the ground of improvement where it is not proved that the increased value of the land is due to such improvement.

Sub-clause (1) of clause (b) 1 of section 33 seems to contemplate an enhancement on prospective grounds. More improvement likely to increase productive powers might give grounds for enhancement. Hence clause (2) provides for the remedy of any unexpected evils of an enhancement decree.

Subsection (2).—The revision of the decree under this section must be by an application and not by *suit*. Under section 38 the rent of an occupancy

raiya cannot be reduced except under the grounds stated therein, and the failure of the landlord's improvement to work is not one of those grounds. No period of limitation has been provided by this Act within which the application for revision is to be made.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

(a) the Court shall not take into account any increase which is merely temporary or casual;

A casual increase in the fertility of the soil is not a ground for permanent enhancement of rent—(*Kristo Mohan v. Hareo Sunkur*, 7 W. R., 235). So in *Khejeh Abdul v. Bhuttu Sheikh*, 22 W. R., 350, Markby, J., observed: "Now if by a natural cause there has been produced not a mere temporary increase in the productive powers of the land, but an increase which will either be permanent or at any rate likely to last for a considerable time, that is one of the elements to be taken into consideration in considering the increased value of land within the meaning of section 18 Act VIII of 1869 B. C."

(b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

35. Notwithstanding anything in the foregoing section,

Enhancement by suit to be fair and equitable.

the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

All the provisions regarding enhancement of rent are subject to this section. Under no circumstances can a raiya, with a right of occupancy, be called upon to pay more than a fair and equitable rent—(*Noor Mahomed v. Hari Prosunno*, W. R., 1864, Act X, 75); the occurrence of a catastrophe such as an inundation during the year succeeding a notice of enhancement was held to be sufficient to render the demand of a higher rent unfair and inequitable—(*Bama Soondari v. Kaloo Peedah*, 10 W. R., 395), and in determining what is fair and equitable the Court may take into consideration the rise in wages; but it does not necessarily follow that, because wages are double what they were, and the necessities of life have risen, that the old rent is fair and equitable under the altered state of circumstances—(*Savi v. Jeeto Meeah*, Marsh., 186). And as the existing rent is always presumed to be fair and equitable until the contrary is shown, it follows that a landlord who claims an increase of rent must clearly make out the grounds upon which enhancement is sought. The grounds too must be one or other of those stated in section 30. This section should be read with section 24 and notes. In *Huro Paosad v. Chundee Churn*, (I. L. R., 9 Cal., 505; 12 C. L. R., 251), Wilson, J., observes, when land is let for the purpose of clearing jungle or other reclamation, and on this ground, or any other ground mentioned in the lease, a reduced rent is provided for the first few years, and it is said that the rent is to be at such and such a rate, a sum as the full rent, does that mean,

as the words seem to import, "that the full rent is to be the full rent as long as the tenure subsists, or is such a rent liable to enhancement under the provisions of the Rent Law? We agree with the lower Appellate Court in thinking that the decision of the Privy Council in *Saradasoondari v. Golan Ali*, 19 W. R., 65, is an authority for holding that the former view is the true one, and that in the present case the rent cannot be enhanced."

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

37 (1). A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March 1883, or if within the said period of fifteen years the rent has been commuted under section 40, or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

An enhancement suit under grounds (c) and (d) of section 30 is therefore always possible, in spite of the result of former suits. But where a decree for enhanced rent has been obtained under grounds (a) and (b), whether under the new or the old Act, or if the rent has been commuted under section 40 of the Act, or increased by contract since 2nd March 1883, no further suit for enhancement under the grounds (a) and (b) of section 30 is tenable within the next fifteen years. So also if a suit for enhancement under these two grounds has been dismissed on the merits. Suppose, however, that a suit for enhancement on the ground of the increase of productive powers has been dismissed on merits, cannot the landlord sue within the next fifteen years for enhancement of rent under grounds (a) and (b) of section 30? I think he can.

37 (2). Nothing in this section shall effect the provisions of section 373 of the Code of Civil Procedure.

Section 373 of the Civil Procedure Code runs as follows: "If at any time after the institution of the suit, the Court is satisfied on the application of the plaintiff (a) that the suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for permitting him to withdraw from the suit, or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or for the part so abandoned, the Court may grant such permis-

sion on such terms as to costs or otherwise as it thinks fit. If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter. Nothing in this section shall be deemed to authorize the Court to permit one of the several plaintiffs to withdraw without the consent of others."

Reduction of rent.

38 (1). An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and except as herein after provided in the case of a diminution of the area of the holding, not otherwise, (namely) :—

(a) on ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

(b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

38 (2). In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

The raiyat cannot contract himself out of the provisions of this section :—see S. 178 (3) (f).

The corresponding section of the old Act was thus worded : "Every raiyat having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the raiyat, or if the quantity of land held by the raiyat has been proved by measurement to be less than the quantity for which rent has been previously paid by him."—Section 19 of Act VIII of 1869 (B. C.) The grounds of abatement recognized by that section were :

1st.—Diminution of area by diluvion or otherwise.

2nd.—A decrease in the value of the produce of the productive powers of the land arising from causes beyond the raiyat's control.

3rd.—When the quantity of land held by the raiyat has been ascertained to be less than the quantity for which rent has been previously paid.

The present section takes only the second of these grounds, and puts back the other grounds in section 52.

An occupancy raiyat holding at a money rent.—A suit for abatement

The person suing for abatement of rent must be a raiyat and a raiyat with a right of occupancy.

will not lie unless the plaintiff admits that the relation of landlord and tenant exists between him and the person from whom the abatement is sought as to the lands in respect of which it is sought—(Abhoy Gobinda v. Kenny; 8 W. R., 518). A raiyat who has held his land for a few months and has paid no rent at all, cannot sue for an abatement of rent—(Braja-

nath v. Unantram, 17 W. R., 449). A raiyat not having a right of occupancy is not entitled to claim an abatement of rent under this section—(Lalla Sheeb v. Nubadeep Chundra, 2 Hay, 430; Sheik Mohim v. Sheik Raheemotulla, 2 Hay, 433). Although this section is confined to occupancy raiyats it cannot be supposed that, Act X of 1859 was intended to take away the right of abatement which had been enjoyed by all tenants before the passing of that Act; and it is a rule founded on the principles of natural justice and equity that if a

But under the general law all raiyats can claim abatement.

landlord lets his land at a certain rent to be paid during the period of occupation, and the land is, by an act of God put in such a state that the tenant cannot enjoy, the tenant is entitled to an abatement. Therefore every tenant, whether with or without a right of occupancy, is entitled to abatement of rent for land washed away, unless precluded by the terms of his kabuliyat from claiming that abatement.—(Sheik Enyetulla v. Sheik Elahee, Sp. W. R., Act X, 42). A putnidar or any other leaseholder can claim abatement of rent under Act X of 1859—(Huro Krishna v. Joikishen, 1 W. R., 299, F. B.; Prosonomoyi v. Soondarkumari, 2 W. R. Act X, 30). This section applies only to occupancy raiyats, but all raiyats and under-tenants, whether they have a right of occupancy or not, can claim an abatement of rent, if they can show that they are entitled to it on principles of natural justice and equity. Section 23, Act X of 1859, clause 3, conferred upon Collectors power to take cognizance of "all claims to abatement," whether preferred by occupancy raiyats, farmers or under-tenants, and a Full Bench of the High Court has held that a suit for remission of rent, brought by a putnidar on the ground that certain portions of land included in his putni had been resumed as chakrui by Government, would lie against the zemindar under Act X of 1859. "It is clear," observed the Court, "that a putnidar can be sued by the zemindar for rent under the fourth clause* of section 23, and it would be most inconvenient and unreasonable and indeed would be at variance with the plain meaning of the words 'all claims to abatement of rent' in the third clause, to hold that he is compelled to go to another Court to claim an abatement of his rent—(Huro Kishen v. Joykishen, 1 W. R., 299, F. B.) A howladar or moku-raridar can sue for abatement of rent under the Rent Law—(Mohesh Chunder v. Gungamoney, 2 Hay, 495; Kamalakanta v. Pogose, W. R., Act X, 65). So also a talukdar is entitled to abatement, although not under the provisions of this section, which applies only to occupancy raiyats—Afsuroodeen v. Musst. Shuroshi Bala, 2 Hay, 664. But it is doubtful whether a talukdar, whose tenure existed from before the Permanent Settlement, can claim abatement on the ground of diluvion—(Ram Chunder v. Lucas, 16 W. R., 279).

It is perhaps almost needless to observe, that zemindars are not entitled to claim an abatement of rent from Government on account of diluvion or any other cause, as the power of altering the public assessment is not vested by the Regulations in the Civil Courts of Judicature, but is reserved exclusively to the Executive Government—(Bhowance Persad v. Musst. Karoona Moyi, 2 Sel. Rep., 242, and S. D. R., 1852, p. 1094).

Zemindars cannot sue Government for abatement.

Fraud.

Fraud on the part of a lessor does not constitute a vested ground for abatement. Thus, where a zemindar gave out an estate in putni, but concealed the existence of an intermediate

* Clause 4, section 23, Act X of 1859 was as follows: "All suits for arrears of rent due on account of land, whether *kherajee* or *lakheraj*, or on account of any rights of pasturage, forest rights, fisheries, or the like." This section was omitted from Act VIII of 1860 B.C.; but under section 33, all suits which were cognizable by a Collector under Act X, were cognizable by the Civil Court under Act VIII of 1860 B.C.

under-tenure, the Court held that the *putnidar* was not entitled to an abatement of rent. In other words, that though the plaintiff might sue to be relieved of his contract, he could not sue for abatement under this section—(*Shookur Ali v. Umola Ahaly*, 8 W. R., 504.) In 1859, G entered into negotiations with respect to the purchase of a certain taluk at a premium of Rs. 42,411, and an annual rent of Rs. 48,070, and in January 1860 he signed a sale bond which obtained an enumeration of the mouzals purchased, the actual sale, being completed on the 2nd June following. Until his death in December 1861, he paid the stipulated rent according to the terms of the deed. Subsequently his widow brought a suit for abatement of the rent on the ground that her husband had been misled as to the amount of rent payable by the under-tenants. *Held* (affirming the decision of the Iligh Court) that under the circumstances the suit could not be maintained—(5 C. L. R., 465 P. C.)

May institute a suit.—The old section was differently worded. Under

Can the raiyat claim the benefit of this section when sued by his landlord.

that section the raiyat might either sue under this section for abatement of rent, or he may, when sued by his landlord for arrears of rent, claim an abatement by way of set off on account of remission of rent to which he is entitled—(*Mohes Chunder v. Gunga Mani*, 2 Hay; *Afsuruddin v. Musst. Shiroshi Bala*, Id., 664; *Dindoyal v. Thekroo Kooowar*, 6 W. R., Act X, 24; *Gour Kishore v. Bonomali*, 22 W. R., 117). The present section seems, however, to give only a right of suit, but as this is a substantive provision, I think the raiyat has a right which he can as well assert in a suit by his landlord. The raiyat may also sue for abatement and refund of excess rents paid on account of diluviated lands—(*Barry v. Moulavi Abdool Ali*, Sp. W. R., Act X, 64).

On the following grounds and except,* &c., not otherwise.—Grounds

Is the tenant restricted to the grounds of abatement mentioned in this section?

of abatement are restricted to this section. The only exception allowed is on account of diminution of area which is provided by section 52. Hence reduction could not be claimed on the ground that the prevailing rate is lower—(*Babun Mundle v. Sheo Kanwari*, 21 W. R. 404). "Sections 18 and 19 of the old Act," however, it has been held, "were passed for the benefit of the raiyat and not for the protection of the zemindar. Section 18 says that no raiyat having a right of occupancy shall be liable to an enhancement of rent, except upon some one of the grounds therein specified, but section 19 is differently worded. It enacts that any raiyat having a right of occupancy shall be entitled to claim an abatement of rent in any of the three cases mentioned therein, but it does not say that he shall not be entitled to an abatement upon any other grounds. Section 18 was to protect him from enhancement, and section 19 was intended to give him a right to abatement in certain cases, but not to protect the zemindar from liability to make abatement in any other case." Thus, where the jumma of a resumed lakheraj estate had been reduced by Government on the condition that the rents of the raiyats should be reduced in the same proportion, it was held that the raiyats were entitled to the benefit of the stipulation made by Government on their behalf at the time when the jumma was reduced. It was, however, added that the right of abatement in this case only applied to the case of rents of which the amounts had been fixed before the jumma was reduced by Government, and not to rents fixed by pottahs or kabuliyats subsequently entered into—(*Sukhawatoollah v. Puthoo Golder*, 1 Ind. Jur., O. S., 7; *Golak Chandra v. Parvati Churun*, 15 W. R., 168); such remission may be claimed in defence in a suit for arrears of rent—(*Baikunta v. Surendranath*, 1 W. R. 84). For further comment see notes under sub-clause (b) of (1) section 52 of the Act.

Permanently deteriorated by a deposit of sand, &c.—"We think," observed the Chief Justice in *Sheik Enyetullah v. Sheik Elahi Bksh*, (Sp. W. R., (Act X), 42) ; 2 Board's Rep., 62), "upon principles of natural justice and equity, that, if a landlord lets his land at a certain rent, to be paid during the period of occupation, and the land is, by the act of God, put in such a state that the tenant cannot enjoy, the tenant is entitled to an abatement. * * * * With regard to the land alleged to have been covered with sand, the Judge of the first Court will have to enquire if that portion was covered with sand, and thereby deteriorated or rendered wholly useless, by the act of God, the tenant will be entitled to an abatement, provided there was no stipulation to the contrary in the *kabuliyat*."

Without fault of the raiyat.—At the same time no raiyat can claim abatement unless the depreciation in the value of the land has resulted from causes beyond his control—(*Munsoorali v. Harvey*, 11 W. R., 291). For further discussion on this subject, the reader is referred to notes under clause (b) of section 52 of the Act.

Price-lists.

39. (1) The Collector of every district shall prepare, Price-lists of staple food-crops. monthly or at shorter intervals, periodical lists of the market-prices, of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(For local areas and staple-crops, see notes to subsection 7 of this section.)

39. (2) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

39. (3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

39. (4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the Official Gazette, and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

39. (5) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the

average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

39. (6) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct, unless and until it is proved that they are incorrect.

The words "shown in the lists prepared for any year subsequent to the passing of the Act," in sub-section (6) have been substituted for "prices shewn thereby" originally proposed, at the instance of the Hon'ble Dr. Hunter. The following extract from his speech will elucidate the text :

"The present Bill substitutes a new and sharp procedure for enhancement and reduction of rents in place of an old and complicated one. Under the existing law such enhancements and reductions of rent are granted on the ground, among others, of increase or decrease in the value of produce. In order to obtain an enhancement on this ground, the landlord had, *first*, to prove an increase in prices of the actual crops taken off the land ; *second*, to show the quantity and quality of those crops ; *third*, to establish the arithmetical relation of the prices to the produce, after making allowances for many incidental considerations and drawbacks. Finally, he had to work out a proportion statement between these complicated factors at present and in time past. The present Bill substitutes for this difficult and complicated process, the simple question of a rise or fall in prices of staple food-crops. That is to say, the single fact of a rise or fall in prices, which was merely the initial fact to be ascertained under the old law, now becomes the only fact to be established. The result is, that enhancements which were not practicable on this ground will now become practicable. The Bill further simplifies the burden of proof, in the first place, by confining the question to the prices, not of the actual produce of the land, but of certain staple food-crops ; in the second place, by publishing price-lists in the official *Gazette*, which are to be accepted by the Courts as presumptive evidence. In this way the Bill narrows the evidence to a single point, and it then provides that Government shall supply evidence on that point. The Bill originally proposed that these lists should be taken as conclusive evidence ; it appeared to the Select Committee, however, that it would be unsafe to assign so high a value to these lists, and the Bill, as now revised, accords only the value of presumptive evidence to these lists. In doing so, however, I venture to urge that we have given the same legal value to two classes of evidence of which the real value is essentially different. For the lists to be published in the official *Gazette* are of two distinct classes ; old lists of prices collected under no adequate safe-guards of their accuracy ; and new lists of prices, to be collected under the very efficient safe-guards provided by this Bill. I believe that the future lists to be compiled under those safe-guards will be worthy of being accepted as presumptive evidence. But I think there is evidence to show that the old lists collected without any of those safe-guards cannot safely be accepted as presumptive evidence. At a late stage in the Bill, a decennial period was substituted for prices in place of a quinquennial period : so that the figures submitted to the Committee only enable me to show what the results would be by accepting those lists for the quinquennial periods originally contemplated. But if we take the price lists submitted to the Committee for quinquennial periods, they would give

very different results in adjoining districts—districts in which such differences are not justified by the actual facts. We must remember that these lists are intended only to show the rise or fall in the purchasing value of the silver; and we know that the rise or fall in that value has not differed very greatly in adjoining districts. But the lists on one side of the Hughli river would give an enhancement of 12 per cent. in Burdwan district, and one of 28 per cent. in Nadiya district on the other side. Further up the Ganges, the enhancement would be 10 per cent. in Patna district on the southern bank, and close on 20 per cent. in the Muzafarpur district on the northern bank. Proceeding eastwards the variations would be from 6 per cent. to 25 per cent. in districts within a given radius of Calcutta. These widely dissimilar results are arrived at by calculating on the price-list of rice alone. If we endeavoured to correct those discrepancies by adding a second crop to the calculation, say maize, as the Government would do, we get still more astonishing results. In the Bhagalpur district, rents would be enhanced 25 per cent. if calculated in the average prices of rice submitted to the Committee, but they would be reduced 46 per cent. if calculated in maize. In the next district but one to the west, Muzafarpur rents would on the same basis of calculation, be enhanced 20 per cent. if estimated in rice rates, but they would be reduced about 25 per cent. if estimated in maize rates. In Patna district which is at places conterminous with these two districts, the reduction of rents, if estimated in maize, would not be 46 per cent. as in Bhagalpur, nor 22 per cent. as in Muzafarpur, but only 2 per cent. These results are worked out from the figures submitted to the Select Committee. I am aware that they would be revised before they were published in the *Gazette*, but after careful enquiry, I do not find that data now exist for correcting those old lists with a degree of certainty which ought to give to the results the value of presumptive evidence. I would ask the Council, therefore, while allowing the value of presumptive evidence to the new lists, to give the old lists neither more nor less value than they had under the Evidence Act at the time when they were collected, that is they shall be relevant evidence, but not presumptive. I submit this amendment not as an amendment on behalf of the zemindars, nor on behalf of the raiyat, but on the ground that it is just and fair to both. We are putting a sharp weapon in the hands of both landlords and tenants, a double-edged weapon which may produce startling results both in the enhancement and in the reduction of rents."

These provisions have been framed upon the principle of the *Tiths Commutation Acts*—See 6 and 7 Will. IV, Cap. 71; 7 Will. IV and 1 Vict. Cap. 69; 2 and 3 Vict. Cap. 15; 5 and 6 Vict. Cap. 54; 9 and 10 Vict. Cap. 75; 10 and 11 Vict. Cap. 164; 23 and 24 Vict. Cap. 93; see notes under section 32, pp. 17 and 27 section 30, ground (b), pp. 167—175. For list prescribed, see the notes to subsection 7 of this section, pp. 189—192.

39. (7) The Local Government, subject to the control of the Governor-General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

The following rules have been prepared by the Local Government under this section (Chapter II) :

1. **Section 39 (6).**—The local areas under this section shall be those entered in Schedule II annexed to these rules, and the mart specified in the same schedule for each local area shall be that at which prices shall be recorded.

SCHEDULE*II.

(Referred to in Chapter II, Rule I.)

PATNA DIVISION. .

DISTRICT.	Local area.	*Staple food-crops proposed by the Colr.	Marts at which prices to be taken.
1	2	3	4
PATNA	Sudder sub-division	Makai up-land ... Rice low-land ...	Patna.
	Barh ditto	Makai up-land ... Rice low-land ...	Barh.
	Behar ditto	Wheat up-land ... Rice low-land ...	Behar.
	Dinapore ditto	Barley up-land ... Rice low-land ...	Dinapore.
GYA	Sudder sub-division	Wheat up-land ... Rice low-land ...	Gya.
	Nowada ditto	Wheat up-land ... Rice low-land ...	Nowada.
	Jehanabad ditto	Wheat up-land ... Rice low-land ...	Jahanabad.
	Aurangabad ditto	Wheat up-land ... Rice low-land ...	Aurangabad.
SHAHABAD	Sudder sub-division	Wheat up-land ... Rice low-land ...	Arrah.
	Buxar ditto	Wheat up-land ... Rice low-land ...	Buxar.
	Sassorum ditto	Wheat up-land ... Rice low-land ...	Sassorum.
	Bhabooah ditto	Wheat up-land ... Rice low-land ...	Bhabooah.
MOZUFFERPORE	Sudder sub-division	Makai up-land ... Rice low-land ...	Mozufferpore.
	Seetamarhoo ditto	Makai up-land ... Rice low-land ...	Seetamarhoo.
	Hajeepore ditto	Makai up-land ... Rice low-land ...	Hajeepore.
DURBHUNGA	Sudder sub-division	Murwa up-land ... Rice low-land ...	Durbhunga.
	Madhubani ditto	Murwa up-land ... Rice low-land ...	Madhubani.
	Tajpore ditto	Makai up-land ... Rice low-land ...	Tajpore.

* Col. 3 has been added under the following Notification of the 8th April 1886 :—

"Having considered the reports submitted on the subject by the Board of Revenue and District Collectors, the Lieutenant-Governor is pleased to determine and notify, under paragraph 2, Chapter II of the Rules under the Bengal Tenancy Act, that the local areas and staple food-crops under section 39. of the Act shall be those entered in the following schedule :"—P. Nolan, Offg. Secretary to the Government of Bengal.

DISTRICT.	Local areas.	Staple food-crops proposed by the Colr.	Marts at which prices to be taken.
1	2	3	4
CHUMPARUN ...	Sudder sub-division ...	<i>Makai</i> up-land ... Rice low-land ...	Motihari.
	Bettiah ditto ...	<i>Makai</i> up-land ... Rice low-land ...	Bettiah.
SARUN ...	Sudder sub-division ...	<i>Makai</i> up-land ... Rice low-land ...	Chupra.
	Gopalgungo ditto ...	<i>Makai</i> up-land ... Rice low-land ...	Meorgungo.
	Sewan ditto ...	<i>Makai</i> up-land ... Rice low-land ...	Sewan.

BHAGULPORE DIVISION.

MONGHYR ...	Sudder sub-division ...	Wheat up-land ... Rice low-land ...	Monghyr.
	Beguserai ditto ...	Wheat up-land ... Rice low-land ...	Beguserai.
	Jamui ditto ...	Wheat up-land ... Rice low-land ...	Jamui.
BHAGULPORE ...	Sudder sub-division ...	<i>Makai</i> up-land ... Rice low-land ...	Bhagulporo.
	Banka ditto ...	<i>Makai</i> up-land ... Rice low-land ...	Banka.
	Muddehpura ditto ...	<i>Murwa</i> up-land ... Rice low-land ...	Muddehpura.
	Soopole ditto ...	<i>Murwa</i> up-land ... Rice low-land ...	Soopole.
PURNEAH ...	Sudder sub-division ...	Wheat up-land ... Rice low-land ...	Kusba.
	Arrareah ditto ...	Wheat up-land ... Rice low-land ...	Arrareah.
	Kishengunge ditto ...	Wheat up-land ... Rice low-land ...	Kishengunge.
MALDAH ...	District of Maldah ...	Wheat up-land ... Rice low-land ...	English Bazar.

CHITTAGONG DIVISION.

CHITTAGONG ...	Sudder sub-division ...	Rice ...	Chittagong.
	Cox's Bazar ditto ...	Do. ...	Cox's Bazar.
NOAKHALLY ...	Sudder sub-division ...	Rice ...	Kalitollah Hat.
	Fenny ditto ...	Do. ...	Panchgachia Hdt.
TIPPERAH ...	Sudder sub-division ...	Rice ...	Commillah.
	Brahmanberiah ditto ...	Do. ...	Brahmanberiah.
	Chandpore ditto ...	Do. ...	Chandpore.

BURDWAN DIVISION.

DISTRICT.	Local areas.	Staple food-crops proposed by the Colr.	Marts at which prices to be taken.
1	2	3	4
BURDWAN	Sudder sub-division ... Ranoeungunge ditto .. Cutwa ditto ... Culna ditto ...	Rice ... Do. ... Do. ... Do. ...	Burdwan. Ranoeungunge. Cutwa. Culna.
MIDNAPORE	Sudder sub-division ... Ghattal ditto ... Tumlook ditto ... Contai ditto ...	Rice ... Do. ... Do. ... Do. ...	Midnapore. Ghattal. Tumlook. Contai.
BEERBHOOM	Sudder sub-division ... Rampore Hat ditto ...	Rice ... Do. ...	Soory. Rampore Hat.
HOOGHLY	Sudder sub-division ... Serampore ditto ... Jehanabad ditto ... Howrah ditto ... Uluberiah ditto ...	Rice ... Do. ... Do. ... Do. ... Do. ...	Hooghly. Bhuddersur. Jehanabad. Mariju. Uluberiah.
BANKOORA	Sudder sub-division ... Bishenpore ditto ...	Rice ... Do. ...	Bankoora. Bishenpore.

RAJSHAHYE DIVISION.

RAJSHAHYE	Sudder sub-division ... Nowgong ditto ... Nattore ditto ...	Rice ... Do. ... Do. ...	Beaulah. Nowgong. Nattore.
PUBNA	Sudder sub-division ... Serajgunge ditto ...	Aus up-land ... Amun low-land ... Ditto ...	Pubna. Serajgunge.
RUNGPORE	Sudder sub-division ... Nelphamari ditto ... Kurigaon ditto ... Gyabanda ditto ...	Rice ... Do. ... Do. ... Do. ...	Rungpore. Nelphamari. Kurigaon. Gyabanda.
DINAGEPORE	Dinagepore Munsiff ... Thakoorgaon ditto ... Raigunge ditto ... Phulbaria ditto ...	Rice ... Do. ... Do. ... Do. ...	Railway Bazar Hat. Lahiry Hat. Raigunge Hat. Berhampore Hat.
BOGRA	District of Bogra ...	Rice ...	Bogra.

DACCA DIVISION.

DACCA	Sudder sub-division ... Narsingunge ditto ... Manickgunge ditto ... Maushigunge ditto ...	Rice ... Do. ... Do. ... Do. ...	Dacca. Muddergunge. Manickgunge. Meerkadim Meerishir Hat.
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• DACCA DIVISION.—*Concluded.*

DISTRICT.	Local areas.	Staple food-crops proposed by the Colr.	Marts at which prices to be taken.
1	2	3	4
FURROEDPORE.	Sudder sub-division ...	Rice ...	Furroedpore.
	Goalundo ditto ...	Do. ...	Goalundo.
	Madaripore ditto ...	Do. ...	Madaripore.
MYMENSINGH ..	Sudder sub-division ...	Rice ...	Nasirabad.
	Tangail ditto ...	Do. ...	Kagmari.
	Jamalpore ditto ...	Do. ...	Jamalpore.
	Kishoregunge ditto ...	Do. ...	Kishoregunge.
	Netrokona ditto ...	Do. ...	Netrokona.
BACKERGUNGE ..	Sudder sub-division ...	Rice ...	Burrisal.
	Patuakhally ditto ...	Do. ...	Patuakhally.
	Perozepore ditto ...	Do. ...	Perozepore.
	Dakshin Shabazpore ditto ...	Do. ...	Bhola.

PRESIDENCY DIVISION.

MOORSHEDEABAD	Sudder sub-division ...	Rice ...	Berhampore.
	Lulbagh ditto ...	Do. ...	Lalbagh.
	Kandi ditto ...	Do. ...	Kandi.
	Jungypore ditto ...	Do. ...	Jungypore.
NUDDEA ..	Sudder sub-division ...	Rice ...	Goarce.
	Ranaghat ditto ...	Do. ...	Ranaghat.
	Moherpore ditto ...	Do. ...	Kaliabazar.
	Chuadanga ditto ...	Do. ...	Chuadanga.
JESSORE ...	Kooshtea ditto ...	Do. ...	Bahadurkhali.
	Sudder sub-division ...	Rice ...	Jessore.
	Narail ditto ...	Do. ...	Narail.
	Magoorah ditto ...	Do. ...	Magoorah.
24-PERGUNNAS	Jhenidah ditto ...	Do. ...	Sulkupah.
	Bongong ditto ...	Do. ...	Bongong.
	Sudder sub-division ...	Rice ...	Chetla Hat.
	Baraset, Dum-Dum and Barackpore sub-divisions.	Do. ...	Baraset.
KHOOOLNA ...	Diamond Harbour sub-division.	Do. ...	Mugra Hat.
	Bussirhat sub-division ...	Do. ...	Baduria Baraon.
	Sudder sub-division ...	Rice ...	Khoolna.
	Satkhira ditto ...	Do. ...	Satkhira.
	Bagirhat ditto ...	Do. ...	Bagirhat.

2. Section 39 (7)—The Collector after such enquiry into the relative extent to which particular food-crops are in his district, as he may think necessary, shall cause a notice to be affixed in his office and in the sub-divisional office specifying the food-crop or food-crops which in his opinion is or are most extensively grown in each local area. The notice shall distinguish, as far as may be practicable, between crops grown on high lands and crops grown on low

lands; and shall fix a day, not being later than 15 days after the publication of such notice on which objections will be taken into consideration. On the day so fixed the Collector shall take into his consideration the objections, if any, to the enumeration of staple food-crops proposed in the notice; and shall report his opinion thereon to the Board of Revenue. The Board of Revenue shall submit the Collector's opinion to the Local Government, with such remarks as may seem to them necessary. The Local Government, after considering the reports of the Collector and the Board of Revenue, shall determine and notify in the *Calcutta Gazette* what shall be deemed staple food-crops in each local area.

3. **Section 39 (7):**—Price-lists of staple food-crops shall be prepared on two market days in the month at intervals of not less than ten days. Such market days shall be selected by the Collector, subject to the control of the Board of Revenue.

4. **Section 39 (7):**—The price recorded for each staple food-crop shall be the prevailing retail price at which that crop was actually sold in the mart to which the price-list refers on the days prescribed in the last preceding rule.

5. **Section 39 (7):**—Price-lists shall ordinarily be prepared by a gazetted officer not below the rank of a Sub-Deputy Collector. But in special cases where a Sub-Deputy Collector is not available, the Collector, with the sanction of the Commissioner, may authorize a canoongoe to prepare the list.

6. **Section 39 (7):**—6. Every officer charged with the preparation of price-lists shall keep a record showing as far as practicable—

(a) The date of his visit to the mart, at which prices are to be recorded.

(b) The names of vendors and purchasers, the quantities sold, and the price thereof, for any sales effected in his presence.

7. **Section 39 (7):**—When price-lists are prepared at the sudder sub-division by any officer other than a Covenanted Deputy Collector, or at other sub-divisions by an officer subordinate to the Sub-Divisional Officer, they shall be submitted to the Covenanted Deputy Collector, or a Deputy Collector, specially nominated by the Collector for the purpose, or Sub-Divisional Officer as the case may be. Such officer shall scrutinize the lists; he may call for explanations and cause manifest errors to be corrected; and, having satisfied himself of the accuracy of the lists, he shall countersign them.

8. **Section 39 (7):**—The price-lists shall be published for not less than one week at the marts to which they respectively refer, at the Collector's or sub-divisional office, and at every police station and munsifi in the local area.

9. After the expiry of the term of publication of the price-lists in the mart to which they refer, as mentioned in the last preceding rule, the lists shall be submitted to the Board with any objections made to them, and with the opinions of the officers who prepared and countersigned them, and of the Collector on such objections.

Commutation.

40. (1) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another,

Commutation of rent payable in land.

either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(2) The application may be made to the Collector or Sub-divisional Officer, or to an officer making a settlement of rents under Chapter X, or to any other officer especially authorized in in this behalf by the Local Government.

(3) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the officer shall have regard to—

(a) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity;

(b) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available; and

(c) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect; and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(6) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

"We have in section 40 included among the matters to be taken into consideration by an officer commuting rent the charges incurred by the landlord in respect of irrigation under the system of rent in kind and the arrangements made on commutation for continuing those charges." (*S. C. B. III.*)

"Tithes were formerly paid in kind, *i. e.*, the person entitled to the tithe received a tenth of the crop. This system was found to be vexatious in the extreme, and productive of disputes and litigation, just as the system now in force in parts of Behar produces constant irritation and oppression. It was finally decided to be a source of so much bitterness and want of charity, that the following rules were laid down for the conversion of tithes into a money payment: (1) find the gross average money value of the tithe of a parish or district for seven years ending on Christmas-day of 1835; (2) apportion the amount of that value upon the lands of the several tithe-payers; (3) ascertain how much corn could be purchased with such amount, one-third of it to be laid out in wheat, one-third

in barley, one-third in oats, at the average price of corn for the seven years preceding 1835; (4) in every future year make payable the price of the same quantity of wheat, barley and oats at their average prices founded on a like calculation of the official returns for the seven years ending at each preceding Christmas."—*Field's Digest*. The full extract quoted under grounds (b) and (c) of section 30, pp. 170-178.

In a set of unreported cases (*Musst. Fasihun v. Dursan Sing*) of Patna which were analogous, the High Court has held that where the rent in kind was changed into a money rent and the occupancy-*rai*yats paid that money-rent for some years, but it did not transpire that the landlords abandoned their rent in kind altogether, they may sue again to revert to the old *bhaoli* rent. As we have observed under section 30, this principle, which even is a very questionable one, will not hold good under the present law—(See *Yakoob Hossein v. Shaik Chowdry Wahid Ali*, 4 W. R. Act X, 23, *per* Trevor, J.; and also *Thakoor Persad v. Nawab Syad*, 8 W. R., 170), in these cases it has been held that a conversion of rent in kind into money rent was feasible under section 18 of Act VIII of 1869 (B.C.), and that the *bhaoli* mode of payment was a retrograde system.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

This chapter does not apply to the proprietor's private land (section 116) or to *utbundi* lands (section 180).

41. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.

Application of chapter.

* See section 4 and notes.

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

This section should be read with section 47.

Section 8 of Act VIII of 1869 (B.C.), and Act X of 1859, ran as follows:

“Raiyats not having rights of occupancy are entitled to pottahs only at such rates as may be agreed upon between them and the persons to whom the rent is payable.”

“The meaning of this section,” observed Peacock, C. J., in the case of *Sheik Moheem v. Roheemollah*, (Marsh., 341, 2 Hay’s Rep., 433) “is that if a party wants a pottah and has no right of occupancy, he must come to some agreement with his landlord as to the amount of rent. In this case the raiyat has made no agreement as to the rate of rent, but he wants us to fix the rent, which he has no right to ask the Court to do, and which would be equivalent to ordering that he should get a pottah for one year at the rate contended for. If he has no right of occupancy, and the landlord has demanded too much rent and

distraigned his goods, he might have brought a suit for excessive demand of rent; or if the landlord had sued him for the full amount mentioned in the notice, he might have resisted that suit, and maintained that the amount demanded was larger than he ought to pay. Not having a right of occupancy, the tenant has no right to remain in the land unless he can agree with the landlord as to the amount of rent." To the same effect are *Sree Nubudeep v. Lalla Sheeb Lall, Marsh.*, 325; *Syed Ahmed Reza v. Agore*, 2 B. L. R., 15. But if the tenant does remain upon the land, the landlord can only recover from him a fair and equitable rate of rent. "The defendant," observed the Court in *Ram Mohun v. Madhu Sudan*, 11 W. R., 304, "has no right of occupancy; but when the plaintiff, instead of giving him notice to quit the land, chooses to retain him as a tenant, and asks the Court to compel the tenant to enter into an engagement to pay rent, the Court is bound to see that it does not enforce the payment of any rates but such as are just and equitable." To the same effect are *Jenn Lall v. Kalee Nath*, 5 W. R. (Act X), 41; *John Stalkart v. Lala Bharut, Sp. W. R.*, Act X, 115). *Per contra* it was held that, when a raiyat has no right of occupancy, the landlord is entitled, after service of notice, to demand rent from him at a fair rate, i. e., the full market rate—(*Muneerudden v. Kennie*, 4 W. R., Act X, 45; *Baboo Gopal Lal v. Budurooddin*, 7 W. R., 28). He has no right to claim the prevailing rate, but is liable to the highest rack rent—(*Koobir Sirdar v. Goluk Chunder*, 3 W. R., Act X, 126). The question has, however, been settled by the Full Bench decision of *Bakranath v. Binod Ram*, 1 B. L. R., 25, in which Peacock, C. J., said: "It was contended that the landlord may enhance the rent of a raiyat not having a right of occupancy to any amount he pleases, and specify any grounds that he pleases for such enhancement; and that he is not bound to prove that any of such grounds exist, and that it is for the raiyat to prove that no such grounds exist. It appears to me that a landlord cannot enhance the rent, unless he states the grounds on which he seeks to enhance; and if those grounds are disputed it will be for the Court to determine whether they exist, and whether they are such as to justify the enhancement. Section 8 has been referred to, but it appears to me to have nothing to do with the question. It merely says that a raiyat not having a right of occupancy is not at liberty to compel his landlord to give him a potta at any rent he pleases."

The contract rate under this Act may operate only as an initial rent, i. e., at the time of the admission of the tenant to occupation. After being admitted, if the initial rate is to be enhanced, it must be done (except under the proviso) by a registered agreement, or by agreement under section 46 (s. 43). But when the rent is determined by Court under sub-section (6) of section 46, that rent cannot be enhanced except by a registered lease, or by agreement under section 46. An agreement under section 46 must again in case of dissension be ultimately determined by a fair and equitable rent—(*Sub-clause 9 of section 46*). But suppose the non-occupancy raiyat has willingly executed a registered instrument for a higher rent, or suppose he has executed an agreement under sub-section (3) for a higher rent, can he subsequently turn round and contend that the rate contracted by him is not a fair and equitable rent? Possibly not; because a rate of rent willingly accepted must be presumed to be fair and equitable.

When a raiyat holds on after the expiry of the terms of his lease, he does so on the same rent and on the same terms and stipulations as are mentioned in the lease until the parties come to a fresh settlement—(*G. Tommey v. Sobha Karim*, 2 W. R., Act X, 73; *Sheik Enayantoollah v. Sheik Elahee Buksh, Sp. W. R.*, Act X, 42; *Sheo Sahoy v. Bechan Singh*, 22 W. R., 31), see section 51 of the Act.

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by Conditions of enhancement of rent. agreement under section 46 :

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

See notes under section 42.

The proviso saves the landlord in some cases from the registered agreement or agreement under section 46. Three years' undisputed collection of rent at a certain rate, even after the admission of the tenant to occupation, will confirm that rate.

Registered agreement :—See Registered lease under the next section.

44. A non-occupancy-raiyat shall, subject Grounds on which non-occupancy-raiyat may be ejected. to the provision of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely) :—

This section is subject to the provisions of section 89 *post*.

A non-occupancy raiyat is liable to ejectment either (1) for default of rent (*cl. a*), or (2) for breach of condition of the tenancy (*cl. b*), or (3) on the expiration of the term of a registered lease, (*cl. c*), or (4) on his refusal to pay a fair and equitable enhanced rent determined under s. 46 (*cl. d*), or (5) on the expiration of the term for which the rate settled under s. 46 holds good. When the tenant is not admitted under a registered lease, *i. e.*, when he settles verbally or under an unregistered deed, this section provides for no rule of eviction, and the words "*not otherwise*" read with clause (c) of sub-section (1) of s. 178 seem to imply that in these hypothetical cases no eviction will take place. The first of these grounds is limited by s. 66, third by section 43, and the fourth and fifth by section 46. It should be observed, however, that the last clause of sub-clause (d) admits of a wider meaning.

Court fee.—In a suit to eject a defendant as being a tenant-at-will the Court fee upon the plaint or memorandum of appeal is 8 annas, under Sch. II, cl. 5 of Act VII, 1870. Cl. XI (d) of section 7 of that Act applies only to suits brought by a tenant to dispute the validity of his landlord's notice to quit—(*Bibi Nurjahan v. Morfan Mundle*, 11 C. L. R., 91). "It is clear," says Garth, C. J., "that clause XI (d) of section 7 does not apply. I agree with the Deputy Registrar that this clause applies only to suits brought by a tenant to dispute the validity of his landlord's notice to quit. There is more reason in the argument that the suit is brought to recover possession of land under clause IV of section 7. But it hardly comes within the true meaning of that clause; because the landlord is already in possession in one sense through his tenant, the defendant, and the object of the suit is merely to put an end to that tenant's interest. The value of the suit would therefore be the difference between the value of the landlord's interest, whilst the tenancy continues, and its value, when the tenant's interest has been terminated. It would be certainly very difficult to estimate the value of that difference, and if it were necessary to do so, I would say that Rs. 10 would be the proper stamp fee. But it seems to me that clause (5) of schedule II solves the difficulty." The plaintiff's real object seems to be to defeat

the defendant's claim to the land as an occupancy raiyat, and if so, the suit is brought to contest a right of occupancy. The proper stamp fee will therefore be 8 annas." It has been judicially determined by a Full Bench of the High Court (Sutherland's Full Bench Cases) that such an application, as is made under section 25 of Act X of 1859 for the assistance in ejecting a raiyat, is not a suit. The Revenue Courts should therefore receive such applications upon a stamp of 8 annas.—(Peary Mohun v. Kena Bewa, 11 W. W. 90.)

Are fractional owners entitled to eject ?—One of several joint owners can eject a lessee after the expiry of the lease—2 W. R., 290. Where land is held jointly, and there is no partition, one part-owner cannot insist on the ouster of a person who has been holding under the other part-owner for a number of years—(*Bisseeswar v. Jugobundhu*, 14 W. R., 183). But where two co-sharers granted two separate leases, each co-extensive with the share of its grantee, and after the expiration of the term thereof one of the co-sharers granted the lessee a new lease in respect of his share only, held that the lessee had no right of occupation as respects the other share, the owner of which was entitled to eject the lessee as holding over after the expiration of his lease—(*Mr. Hamilton v. Rajah Raghu Nundun* 20 W. R., 70). One of several co-sharers cannot sue to evict a tenant of land which belongs to them all—(*Alum Manghee v. Ashad Ali*, 16 W. R., 138). A suit for ejectment, brought in plaintiff's own right and on behalf of his co-sharer without authority from such co-sharer, cannot be entertained. The right of a sharer in a joint estate is a right of common enjoyment of the lands and premises, together with the tenant of the co-sharers, in like manner as the co-sharers themselves would have it—(*Hulodhur v. Goorudass*, 20 W. R., 126). Where a tenant has been put into possession of *ijmali* property with the consent of all the co-sharers, no one or more of the co-sharers can turn the tenant out without the consent of the others; but no person has a right to intrude upon *ijmali* property against the will of the co-sharer or any of them; if he does so, he may be ejected without notice, either altogether, if all the co-sharers join in the suit, or partially, if only some wish to eject him; and the legal means by which such a partial ejectment is effected, is by giving the plaintiffs possession of their shares jointly with the intruder, as explained in the case of *Hulodhur v. Gooroodas*—(*Radha Prosad v. Esup*, I. L. R., 7 Cal., 414; 9 C. L. R., 76;) where it is optional with several joint lessors to avail themselves of a condition of re-entry upon breach of certain covenants, one or more of the lessors cannot insist upon a forfeiture without the consent of the others—(*Reusut Hossein v. Chorwar Sing*, 7 Cal., 470; 9 C. L. R., 260). A fractional shareholder is not entitled to maintain a suit for ejectment—(*Tulsi Panday v. Lella Bachulal*, 12 C. L. R., 223). A lease granted by all proprietors cannot be varied or terminated at the suit of one—(*Bollye v. Akram*, I. L. R., 4 Cal., 961.) Where several co-sharers have served a joint notice to quit, upon which notice they jointly institute a suit for the recovery of the land, the fact that one of the plaintiffs withdraws from the suit will not prevent the remaining plaintiffs from obtaining a decree for possession of their shares of the land—(*Dwarkanath v. Kali Chunder*, I. L. R., 13 Cal., 75.)

The provision applies only to agricultural holdings.—The definition of the word (raiya) will clearly show that this provision is meant only for agricultural holdings. See section 182 and notes. For other holdings, the Transfer of Property Act will apply. These provisions will therefore have no application to land forming part of a street in a town—(*The Collector of Monghyr v. Hakim Madar*, 25 W. R., 186; *Ram Narain v. Nobin Chunder*, 18 W. R., 205). When the Collector has issued due notice of enhancement under section 14 of Regula-

tion VII of 1822, of the jumma of lands situate in town and subject to that Regulation, and on failure by the tenant to accept a settlement at the revised rate, an action in ejectment has been brought, the Civil Court has no power to consider whether the new rate of assessment is reasonable, or in any way to interfere with the amount of the revised jumma as fixed by the Collector. Where the tenant refuses to accept a revised settlement under such circumstances, he is to be entitled to a reasonable time within which to remove a house standing upon the lands in question—(Ram Chand v. The Government, 6 C. L. R., 365).

(a) on the ground that he has failed to pay an arrear of rent;

This clause is governed by section 66 *post*. Read also section (14 of the Transfer of Property Act.)

The receipt of rent for one year by the landlord bars his right to eject the tenant for non-payment of rent due up to the end of the preceding year—(W. R., F. B., 10; 1 Hay, 89; Marshall, 25.) Where a lease contained two provisions one for payment of rent, and the other for forfeiture and re-entry on default of payment, and by a later solenama the rent was put an end to and the lessor received back a portion of his land, and by a subsequent solenama the lessee's agreeing to pay a new rent and no provision was made for re-entry or forfeiture, the clause as to forfeiture and re-entry in respect of the original rent was held not to apply to the rent under the last solenama—(Musst. Rahimunnesa v. Musst. Supan, 18 W. R., 244).

(b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;

. This sub-section should be read with section 155.

A lease contained a stipulation that the raiyat should give up such part of the land as was unfit for cultivation of indigo, and should not sub-let the same. Held, that as the lease contained no proviso for forfeiture or right of re-entry for the breach of this covenant, the landlord was not entitled, upon such breach, to maintain an action for ejectment—(2 Hay, 451; Marshall, 366; 2 W. R., Act X, 101; Mahomed Faez Chowdry v. Shib Doohari, 16 W. R., 103). Under the present Act, a contract against subletting would be illegal. (Sections 85—178.) The clause in a lease regarding forfeiture of the terms in the event of the tenant neglecting to cultivate the land is not *ad terrorem*, but may be enforced on proof of neglect,—(25 W. R., 227). See section 23 and notes, pp. 134—136 *ante*.

(c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;

The operation of this section is limited by section 47.

A landlord suing for ejectment, who admits that the defendant has been his tenant, cannot succeed upon any other ground than that the period of tenancy

has elapsed or in some way terminated—(Shaikh Wullah Ali v. Shaik Golam Gour, 19 W. R., 25; Haradhun v. Dinabundhoo, 25 W. R., 319). Where the raiyat is admitted to occupation of land verbally or under an unregistered lease, he is not liable to eviction under this clause.

Registered lease:—For the definition of the words 'lease,' and 'registered,' see pp. 45—46, *ante*. Section 17 (d) of Act III of 1877 provides that "lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent shall be registered. Provided that the Local Government may, by order published in the

What are leases and what are not.

official Gazette, exempt from registration any leases executed in any district, or part of a district, the terms granted by which to not exceed five years, and the annual rents reserved by which do not exceed fifty rupees;" and section 18 (c) provides that "leases of immovable property for any term not exceeding one year, and leases exempted under section 17" are optionally registrable. Under these sections, it has been held that the registration of deeds which are mere preliminaries to the main contract or engagement or which are steps in or mere parts of a transaction, is not compulsory. Accordingly it has been held that an *amuldustuk* is only a preliminary to a lease and not a lease and its registration is not compulsory—(Punwareo Lal v. Sungur Lal, 7 W. R., 280). Nor a *doul* or *amuldari* is so—(Goluk Kishore v. Anund Mohan, 12 W. R., 394). Nor a *doul darkhast*—(Moheruunesa v. Agunee, 17 W. R. 509; Chuni Mandur v. Chundi Lal, 14 W. R. 178 Winterscale v. Gopal Chunder, 8 B. L. R. O. S. 90; Bhaio Abnath v. Kishore Mohiny, 3 B. L. R., App.; Maharajh Luchmesour v. Rung Lal, I. L. R. 7 Cal., 708). A *doul darkhast*, even if attested by witnesses is not a lease—(Lal Jha v. Negroo, I. L. R. 7 Cal., 717). But if it has the word "granted" upon it signed by the landlord and the word purports to accept the contract, it is a complete lease and requires registration.—(Syud Sufdar Reza v. Amzed Ali, I. L. R. 7 Cal., 703). A *doul fehrist* is only a record of the zamindar's agent of rents settled with the raiyats, and to which various raiyats affix their signatures in testimony of the correctness of the rents recited thereon.—(Gunga Prosad v. Gagan Sing, I. L. R., 3 Cal., 322). An entry showing the extent of the holding, the amount of rent payable, disbursement and balance, made in book of the lessor and signed by the lessee, at a date subsequent to the lessee's entering upon possession under a verbal agreement is not a lease—(Rani Narain Kumari v. Ram Krishna, I. L. R., 5 Cal., 864). A document providing for the payment of *salami* for a lease is not lease.—(Kedarnath v. Surendra Dev, I. L. R., 9 Cal., 865). So a correspondence does amount not to a lease—(The Port Canning Land Investment Reclamation and Dock Co. Ltd. v. A. Smith, 21 W. R., 315).

A lease for more than a year is not the less a lease because a condition is attached to the consideration, and because its term may be lessened on the payment of a sum of money by the lessor. Such a lease cannot be used in evidence unless it is registered—(Buksh Ali v. Sreemati Navatara, 13 W. R., 468). A lease for so long as the lessee or tenant continues to pay the stipulated rent is a lease not limited to a year and must be registered—(Sheogolam v. Budreenath, 4 N. W. P. Rep., 36). Where a kabuliyat for one year contains a provision extending its term to more than that period, it cannot be admitted in evidence without registration—(Kisto Kali v. Agemon Bewa, 15 W. R., 170). So when a potta for one year contains a provision that it is to remain in force till another potta is granted, it must be registered—(Venkata Chelhun Chetti v. Aadian, I. L. R., 3 Mad., 358). But a kabuliyat in which a raiyat agrees to hold land under a potta for a specified year, the agreement between the parties being that

at the close of that period a fresh settlement would be made, was held to be a lease for a year, and not to need registration, although a clause intervened to the effect that year by year the raiyat would pay rent at the above rate—(*Jugdesh Chunder v. Ahodullah Mundle*, 14 W. R., 68). A lease for six months certain contained a condition that after the expiry of the term aforesaid, the lessee might continue in possession till the lessor called upon him to vacate. This was held not to have extended the term for which the lease was granted, as at the conclusion of that term the lessee would be only a monthly tenant of the lessor—(*Morovithal v. Tukaram*, 5 Bom. A J., 92). So a *kabuliyat* for one year certain, containing an expression on the tenant's part of his readiness to hold the land longer, if the landlord should desire it, was held to be a lease for one year only—(*Apu Badgarda v. Nurhari Annaji*, 1 L. R., 3 Bom., 21). Leases which were exempted from the operation of s. 17, cl. 4, Act XX of 1866, were leases the term of which was one year certain. Where a *zur-i-peshgi* lease was granted for one year, but with a stipulation that unless the loan were repaid within that time it should continue in full, it was held that such a lease came within the words of s. 17, cl. 4, Act XX of 1866, "leases of immoveable property for any term exceeding one year," of which registration is compulsory—(*Bhubani Mahti v. Shilmath*, 1 L. R., 13 Cal., 113).

Section 49 provides that "no document required by section 17 to be registered shall affect any immoveable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power unless it has been registered in accordance with the provisions of the Act."

Section 48 of Act III of 1877 provides that "all non-testamentary documents duly registered under this Act, and relating to any property whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession." Where a *potta* has been found inadmissible by reason of non-registration, no contract which it contains can be received in evidence—(*Dinamath v. Debnath*, 13 W. R., 307; *Musst. Kaboolan v. Shumsher Ali*, 11 W. R., 16). Where the only issue in a rent suit is whether the rent has been paid or not, the case may be tried although the *kabuliyat* is inadmissible by reason of non-registration—(*Denomath v. Debnath*, 14 W. R., 429). The following remarks occur in the *statement of objects and reasons* of the Registration Act of 1871: "Certain decisions of the High Court at Fort William have made serious inroads on section 49 of the same Act, which declares that no instrument requiring to be registered 'shall be received in evidence in any civil proceeding in any Court.' The High Court has decided that an unregistered document requiring registration as affecting an interest in land is admissible in evidence in a Civil proceeding for any purpose for which registration is unnecessary. The section has been redrawn so as to preclude, it is hoped, in future, a construction so opposed to the intention by the Legislature."—(*The Gazette of India*, October 5, 1870, p. 333).

Section 50 of Act III of 1877 provides "Every document of the kind mentioned in clauses (a), (b), (c) and (d) of section 17, and clauses (a) and (b) of section 18 shall if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.—Nothing in the former part of this section applies to leases exempted under the proviso in section 17, or to the documents mentioned in clauses (e), (f), (g), (h), (i), (j), (k), and (l) of the same section. Explanation—In cases where Act No. XVI of 1864 or Act

No. XX of 1886 was in force and the place and the time in and at which such unregistered document was executed, "unregistered" means not registered according to such Act, and where the document is executed after the 1st day of July 1871, not registered under Act No. VIII of 1871 or this Act."

The question of priority of registered documents to unregistered documents has led to numerous contradictory decisions. It seems now to be a settled law that when the case falls under section 48 of the Registration Act, the registered document will prevail against

A Registered document an oral agreement with regard to the same property, will not prevail against "unless where the agreement or declaration has been accompanied by possession." This proviso was in early decisions held also to apply to cases falling under section 50. The

A registered deed would not under the old decisions prevail against an unregistered deed, accompanied by possession. *ruling decision to that effect was that of Salim Shaikh v. Boidonath, (12 W. R., 217) in which Markby, J., reviewed a number of early decisions, and was followed in Nursing Porkaet v. Musst. Bewa, (14 W. R., 250 ; 5 B. L. R., 2 R. App. 86) where Jackson, J., held that if pos-*

session of immoveable property has been given under an unregistered lease, a subsequent grantee of a registered lease cannot maintain a suit to evict the lessee in possession on the ground of the priority of his deed — (*Gour Kanta v. Sridhar, 12 W. R., 456 ; Narain Doss v. Gungaram, 20 W. R., 287*). The same view was adopted in *Denonath v. Anluk Mani, I. L. R., 7 Cal. 753*, in which Field, J., reviewed a number of early decisions, and *Prinsep, J.*, referred to the unreported case of *Indra Narain v. Phool Moni*, decided by himself and Markby, J. The reason which led the Judges in these cases to apply the proviso of section 48 to section 50 is thus forcibly expressed by *Prinsep, J.*: "I am unable to learn any valid reason for any difference between an unregistered and an oral agreement, both followed by delivery of possession, or why, where registration is optional, such a deed should be placed at a disadvantage, in other words why because such an agreement has been reduced to writing, it should not at least be as good as the previous state of the same transaction before the terms agreed on were fixed and made certain by a permanent record. 'Such a construction of the law,' to quote a recent judgment of the Privy Council in the same Act, 'would cause great difficulty and injustice' which it cannot be supposed the Legislature contemplated, and would be inconsistent with the language and tenor of the rest of the Act,—(*Mahomed Ewaz v. Birj Lal, L. R., 4 S. A. A., 166*). If the terms were interpreted strictly, a person in the position of the respondent *Fulmani* would have a title not only uncertain but dependent on the conduct of her vendor, until she had perfected that title by a possession of 12 years, so as to enable her successfully to plead limitation. I find it impossible to conceive the Legislature intended to countenance such a state of things, and therefore it appears to me that the rule laid down in the case of *Salim Sheik* must be followed, and we must hold that notwithstanding the enactment of s. 48 of the Act of 1871, the full force of that rule is unaffected."—(*See also Balaram Nimchand v. Appa, 9 Bom. 121, where Westropp, C. J., gives a summary of the decisions and his own opinion*). In *Fazluddin Khan v. Fakir Mahomed, (I. L. R., 5 Cal. 336)*, however, the Court (*Garth, C. J., and Pontifex, J.*) gave

The case law on the point changes. A registered deed will operate against an unregistered deed, accompanied by possession. a new turn to the decisions on this point. They held that the leading case of *Salim Sheik* and most of the subsequent decisions dependent upon it were under section 48, and "that the only reasonable construction of section 50 of Act VIII of 1871 is that where property under the value of Rs. 100 is purchased by two innocent purchasers, the one by a registered deed and

the other by an unregistered deed, and there is no fraud shown, or other circumstances which in equity would protect the unregistered purchaser against the registered, the title of the latter shall prevail. The section contains no such qualification as that a purchaser under an unregistered deed who has obtained possession, would have priority against a subsequent purchaser under a registered deed, and the Courts are not at liberty to import such a qualification into the section"—(per Garth, C. J.). Referring to the observations of Mr. Justice Prinsep, quoted above, Mr. Justice Pontifex said: "I am unable to follow this reasoning to its full extent, for it seems to me to be founded on the assumption that the words relating to possession which are found in s. 45 of the Act of 1871 and the present Act, were inserted for the protection of oral alienees, whereas in my opinion, they were inserted for the purpose of limiting the operation of oral alienations, and of declaring the law with respect to them. Section 48 of Act XX of 1866 had provided that all instruments duly registered should take effect against any oral agreement or declaration. Yet that Act did not declare oral alienations to be invalid to all intents and purposes, nor was it the object of the Registration Acts to repeal the existing law which authorized oral alienations of both moveable and immoveable property of any value, and whether voluntary or for valuable consideration. It therefore became necessary to qualify the too general language of s. 48 Act XX of 1866, and at the same time to declare the law as to oral alienations, which were not intended to be affected, which object was accomplished by patching on a proviso to the section. Section 48 of the Act of 1871 is applicable to *all* oral transactions, whether voluntary or for valuable consideration, and whether the property is moveable or immoveable, and whether its value is over or under Rs. 100. The insertion of the words relating to possession in section 48 appears to me, therefore, to have been merely intended as a declaration of the law limiting the operation of oral alienations. It was in fact equivalent to saying that although the Registration Acts are not intended to interfere with oral alienations which, from the nature of the case, cannot be registered, yet the only oral alienations of which the law can take notice, in competition with registered instruments, are those which are properly established by evidence of possession. The insertion in s. 48 of the words relating to possession, in fact rather detracts from, than adds to the security of oral alienations because unless the oral alienee was in possession the Courts now would be excluded from considering any equity which he might have against a subsequent alienee by registered deed." The turning point, however, is the equity of notice that was discussed in this case: "If it could be shown," says

But not so, if the 2nd transferee has notice of the 1st transfer.

the learned Chief Justice, "that the subsequent purchaser under the registered instrument had notice of the conveyance by the prior unregistered deed, then the equitable doctrine which obtains in like cases in England and which is explained in the case of *Le Nevi v. Lo Nevi*, (3 Atk., 646, and 2 White and Tudor's L. C., 34) might prevent the registered purchaser from asserting his rights against the unregistered under s. 50." Mr. Justice Pontifex observed: "In *Benham v. Keane*, (1 J. and H., 702), V. C. Wood very clearly stated the principles of equity which apply. He says:—"The whole doctrine of notice proceeds on this—where a man has created a charge affecting his estate, he is not at liberty to enter into any new contract in dissolution of the interest which he has created. The Court will not allow him to do the wrong himself, nor will it suffer any third person to help him to do it. No one will be permitted to enter accordingly into a contract with a person so situated, which would redound to his benefit at the expense of the prior incumbrance. The conscience of a purchaser is affected through the conscience of the person through whom he buys; that person is

precluded by his previous acts from honestly entering into a contract to sell, and therefore any one who purchases *with the knowledge that his vendor is precluded from selling*, is subject to the same prohibition as the vendor himself, I think therefore that we ought to interpret s. 50 as intended to apply to the case of two innocent purchasers, giving the preference to the one who has taken the greater precaution to secure his title, but not as intended to apply to the case of a subsequent purchaser who registers, but who at the date of his purchase, had actual notice of a prior unregistered purchase. For, otherwise, in this latter case, the subsequent purchaser with *full notice* would, by registration, be enabled wilfully to defraud a prior purchase of the property, which he had honestly purchased, and which had been properly and *legally* conveyed to him. But according to the English decisions, the notice of fraud must be very clearly proved." These contradictory decisions led to a Full Bench, which held (Prinsep, J., dissenting) that the fact of a vendor having given possession to the first and unregistered purchaser, even if such possession continued to the date of the second conveyance, did not necessarily prevent the operation of that part of s. 50 of the Registration Act which enacts that "a registered document shall take effect as regards the property therein comprised against every unregistered document relating to the same property," and the only case in which the title of the prior unregistered purchaser can prevail against the subsequent registered purchaser for value is when the latter takes with notice of the title of the former—(Narain Chunder v. Dataram, I. L. R., 8 Cal. 597, F. B.; Abdool Hossein v. Raghunath, I. L. R., 13 Cal. 70; Bhalu Roy v. Jakhu Roy, I. L. R., 11 Cal., 667). But although the mere fact of possession having been taken by a purchaser under an unregistered conveyance is insufficient, of itself, to establish a good title to a property as against a subsequent registered purchaser, and is not conclusive evidence of notice as against him, yet in the majority of cases, such possession is very cogent evidence of notice.—(Nani Bibi v. Hafizullah, I. L. R., 10 Cal., 1073). This case almost brings the case law to what it was before. Mark also that when leases are exempted from registration by Local Government, the question of priority does not arise (s. 50 of the Registration Act. Explanation. Dinanath v. Auluckinand, I. L. R., 7 Cal., 753), Field, J., in delivering his judgment said: "It may be observed, although it cannot be used as an argument for the decision of this case, that in the revised draft of the *Transfer of Property Bill*, published in the *Gazette of India* of the 26th March last, 'sale' is defined as 'the transfer of ownership &c.,' and such transfer, in the case of tangible immoveable property of a value less than one hundred rupees, may be made either by a registered assurance or by delivery of the property, such delivery being said to take place when the seller places the buyer in possession (s. 54)." Taking up this hint, in answer to the dissent of Mr. Justice Prinsep, Garth, C. J. observed in the Full Bench Case of Narain Chunder: "As I read the *Transfer of Property Act*, s. 54 does virtually abolish optional registration. No transfer can now be made, after that Act comes into operation, by any instrument in writing, unless it is registered. It is true that in the case of possessory interest, the value of which is less than Rs. 100, an oral transfer coupled with possession will pass the property; but there will be no such thing as a *transfer in writing*, unless it is registered."

Expiry of lease.—A landlord suing for ejectment, who admits that the defendant has been his tenant, cannot succeed upon any other ground than that the period of tenancy has elapsed or in some way terminated—(Shaikh Wullah Ali v. Shaik Golam Gour, 19 W. R., 25; Haradhun Mundul v. Dinabundhoo Mazumdar, 25 W. R., 319.) Where the raiyât is admitted to occupation of

land verbally or under an unregistered lease he is not liable to eviction under this clause.

(d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

When an agreement or lease has been accepted by the raiyat under sub-section (3) of section 46, it seems that he is not liable to ejectment at all, because the word "determined" obviously refers to "determined by Court" (sub-section (3) of section 46) and not to "determined by agreement or lease." The last clause seems to refer to five years provided for by sub-section (7) of section 46. Observe the force of the word 'such.'

Disclaimer.—Clause (d) exhausts the grounds of ejectment under section 44. Will a disclaimer operate as forfeiture?—See pp. 10-13, and 139-140, *ante*.

45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

Conditions of ejectment on grounds of expiration of lease.

Read this section with section 44, cl. (c) and (d).

The application of this section does not seem to be limited to clause (c) of section 44. Here the word used is 'lease', and the section does not speak of 'registered or unregistered lease'. The object of the provision is that a tenant of a fixed term should know six months before that his landlord will not suffer him to continue his holding, while if the landlord suffers him to continue more than six months after the expiration of the lease, the presumption is that he has no intention or has abandoned his intention to terminate the tenancy, and that notwithstanding a notice to quit has been served six months before the expiry of the lease. Hence if a notice to quit has been served six months before the expiry of the lease, but the suit is instituted more than six months after the expiry, the notice goes for nothing.

The suit in ejectment only is not to be instituted unless a notice is served, but after the expiry of the lease, and before the notice is served, in what light is the tenant holding on to be looked at? Is he to be treated as a trespasser or as a tenant?

What is his status? Section 116 of the Transfer of Property Act solves this question. It has been held that a tenant who holds over after the expiration of a lease does so on the same rent and terms as before—(Sheik Enyutallah v. Sheik Elahie Buksh, Sp. W. R., Act X, 42; 2 R. J. P. J., 204; Tarachunder v. Amir Mundal, 22 W. R., 394; Sreemuty Altav v. Joogul Mundal, 25 W. R., 234). But to justify a holding over after expiry of lease, a direct consent on the part of the landlord is requisite; otherwise the tenant will be regarded as a trespasser—(4 W. R., 24; Mr. M. H. Gale, v. Maharanee Sreemuti, 15 W. R., 133). So if a tenant holds for a term of years, and no new tenancy is created by the zemindar of the termination of the lease, either by receipt of rent or otherwise, and if the tenant has no other title to the land besides the lease, the zemindar is entitled to evict him, on the expiration of the lease without the intervention of Court—(Chowdry Izhoorul Huque v. Bhoosee Mahtoon, 25 W.

The status of a tenant after the expiry of his lease.

R., 201). It is doubtful if this decision will hold good under the present law. A notice under this section, however, is intended for a landlord, but suppose at the expiry of a lease, a third person enters as cultivator with the consent of the landlord, the ex-lessee possibly cannot object on the ground of notice. The section only says that the landlord cannot *sue* without a notice, but nowhere in this Act has it been laid down that a tenant holding on after the expiry of the lease is entitled to retain possession till he is served with a notice. Equitably considered, however, that intention of the Legislature could be inferred from the provision of notice. A tenant in possession after the expiry of his lease can only be ejected by due course of law—(*Safulla Khan v. Woopen Khan*, 9 W. R., 123); there is no difference in law between the position of a raiyat holding pottah and that of one holding over after the expiry of the term covered by a pottah, with the consent of his landlord. Such a tenant cannot be evicted without a reasonable notice to quit being given; and the relationship does not come to an end at the expiration of each year, without some act on the part of the landlord and tenant jointly or either of them—(*Chatoori Sing v. Makund Lal*, 1. L. R., 7 Cal., 718; *Ram Khelawan v. Musst. Soondra*, 7 W. R., 152.)

The Local Government has prescribed the following mode of service of a notice. Mode of service of no-notice under this section:—"Section 45. Notice to a raiyat to quit under this section shall be served through the Court having jurisdiction to entertain a suit for ejectment from the holding in the manner prescribed for the service of the summons on a defendant under the Code of Civil Procedure and shall be subject to the same process fee."

Notice to quit:—This section now settles the period of notice to which the non-occupancy raiyat is entitled, and the time when such notice should expire; and possibly this section will apply to a raiyat holding a homestead when there is no local custom or usage regulating it (see section 182 *post*, and notes). But when the homestead is held not by a raiyat, the question of notice and its reasonableness becomes complicated.

Section 106 of the Transfer of Property Act runs thus: "In the absence of a contract, a local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes, shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by 15 days' notice expiring with the end of a month of the tenancy. Every notice under this section must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."

A raiyat who has held without any period having been fixed for the duration of his tenancy, although he may not have gained a right of occupancy, cannot have his holding determined without reasonable notice to quit; and a notice given in the last month of a current year would not be sufficient—(*Bakra Nath v. Binode Ram*, 10 W. R., 33, F. B.). According to section 8, Act VIII of 1869 (B.C.) the landlord has a right to make his own terms with the tenant or to turn him out of occupation by serving him with a reasonable notice to quit unless he agrees to pay the rent required—(*Janoo Mundur v. Brijoo Singh*, 22 W. R., 548). Such notice need not be confined to a simple demand of possession and notice to quit on a certain day. It is sufficient if the landlord

asks for a higher rate of rent and gives the raiyat notice to quit if he declines to pay it—(*Hem Chunder v. Radha Prosad*, 23 W. R., 440). A tenant-at-will who has been served duly with a notice to quit, may be successfully sued for ejectment—(*Abdool Kareem v. Omer Chand*, 24 W. R., 461). In *Rajendra Nath v. Bassider Rahman*, 1 L. R., 2 Cal., 146, F. B.; 25 W. R., 329, F. B., the referring Judge (Markby, J.) observed: "It is, I think, clear upon the authorities that he could not have been ejected without a reasonable notice to quit and and then only at the end of the year—(*Bakra Nath v. Binode Ram and Janoo Mundul v. Brijo Sing*). And unless his tenancy has been put an end to by this present litigation, it is still subsisting. This last point is one upon which the doubt arises in consequence of a decision in *Hem Chunder v. Radha Persad*. There the learned Judges, whilst recognizing the right of the tenant to a reasonable notice to quit, expiring at the end of the year, seem nevertheless to consider that the institution of a suit is itself a sufficient demand of possession for the purpose of maintaining the suit, and that the tenant's claim for a reasonable notice, expiring at the end of the year, will be satisfied by fixing such a date for giving up possession as will be fair towards himself. If that be so, I do not think the plaintiff in the present case could recover possession; he would only be entitled to some compensation for having been ejected too soon. But with very great deference, I cannot bring myself to think that the decision I have referred to is correct. I do not see how the landlord, who has not determined the tenancy by a proper notice, can, recover in ejectment. Even in the case of a tenancy-at-will, it is necessary under English law that the will should be determined—*Doe de Jacobs v. Philips*, 10 Q. B., 130, where it was argued that the will was determined by bringing the action, but the Court held that it was not so. The case of a raiyat whose tenancy can only be determined at the end of the year by a reasonable notice to quit is a much stronger one. It seems to me impossible to consider such a raiyat otherwise than as a tenant from year to year. I do not say that the incidents of the tenancy are precisely the same as those of a yearly tenancy in England. But I cannot think that the raiyat can be ejected without a proper notice to quit. The case of *Hem Chunder v. Radha Persad*, is based upon the decision in *Mohomed Rasid v. Jadoo Mirdha*, (20 W. R., 401), but I am strongly disposed to think that the learned Judges did not there intend to lay down any proposition of law at all. I think that decision only carries out a suggestion made by the Court for the benefit of the parties, and in order to avoid further litigation." The judgment of the Full Bench was delivered by Garth, C.J.: "We are of opinion that in the case of a raiyat of the class specified in the question referred to us, i. e., a raiyat whose tenancy can only be determined by a reasonable notice to quit expiring at the end of the year, the raiyat can claim to have a suit for ejectment brought against him by his landlord dismissed on the ground that he has had no such notice." Proceedings in a Criminal Court under section 53 of the Code of Criminal Procedure are not a sufficient demand of possession for the purpose of maintaining an ejectment suit—(*Ramruttan v. Nritya Kali*, 1 L. R., 4 Cal., 339.) There is no difference in law between the position of a raiyat holding without a potta, and that of one holding over after the expiry of the term covered by a potta, with the consent of his landlord and both are entitled to a notice to quit—(*Chaturi Sing v. Mukund Lal*, 1 L. R., 7 Cal., 710; *Ram Khelawan Singh v. Musst. Soondra*, 7 W. R., 152). A notice to quit running only for ten days and terminating on the 25th Jeyt is not a sufficiently reasonable notice on which a landlord can maintain a suit in ejectment against a tenant from year to year—(*Ramruttan v. Nritya*, 4 Cal., 339.) A notice to quit within thirty days, served by a landlord

on his tenant, at a time when the crops are ripening, is unreasonable and insufficient. Where such a notice was given, the Court refused to determine what would have been a sufficient notice, and to make a decree to take effect at a future date on the basis of such notice—(*Jubraj Roy v. W. Mackenzie*, 5 C. L. R., 231). A tenant, other than an occupancy raiyat, is entitled to a reasonable notice to quit. "What is reasonable notice is a question of fact which must be decided in each case according to the particular circumstances, and the local customs as to reaping crops and letting land. In the present case a three months' notice was given; there was no contention that, at the time when that notice expired, any crop was upon the ground, the necessity of removing which would have made the notice under the circumstances unreasonable. Further the notice did, as a matter of fact, expire within seven days of the close of the year." *Per Field, J.*—The notice in the case was found good—(*Juggut Chunder v. Rup Chand*, I. L. R., 9 Cal. 48). There is no authority for the proposition that a notice to quit to a raiyat other than an occupancy raiyat must terminate at the end of a cultivating year or by a three months' notice. Such raiyat is only entitled to a 'reasonable' notice and such as will enable him to reap his crop; what is a reasonable notice is a question of fact to be decided in each case having regard to its particular circumstances, and the local customs as to reaping and tilling land.—(*Radha-govinda v. Rakhal Das*, I. L. R., 12 Cal., 82). It is not necessary that the period allowed in a notice to quit by a landlord to his tenant should terminate at the end of the year but the notice must be in respect of the date of determination of the tenancy as well as in other respects to a reasonable notice. A notice to quit served on the 26th Pous, and allowing two months to the tenant to vacate his holding, such period thus expiring on the 26th Falgun, when it appeared that cultivation began in the months of Magh and Falgun, and that they were the months for tilling out land in the district, it was held not to be a reasonable notice.—(*Bidhumukhi v. Kofiyatullah*, I. L. R., 12 Cal. 93). "There is no law in this country which requires a notice to quit, to expire at the end of the year and there is no law which requires six months' notice to be given."—*Per Field, J.* (*Kali Kishen v. Golamali*, I. L. R., 13 Cal. 3). A notice in the

Alternative notice.

alternative form to quit land or pay enhanced rent was adopted by *Phear, J.*, in *Jumoo Mundur v. Brijoo Singh*, (22 W. R., 548). But the correctness of this decision was doubted by *Garth, C. J.* in *Mahamaya v. Nil Madhub*, (I. L. R., 11 Cal., 533). The learned Chief Justice observed: "Now in the first place, I am not aware of any other case in which this ruling of *Phear, J.*, has been approved. It was an extra judicial opinion, not necessary for the purposes of the case then under consideration, and I think it may be well doubted whether a tenant, after such alternative notice continuing in occupation of the land, would be liable to pay the enhanced rent claimed. * * A notice to quit ought to be clear and unambiguous. This is the English rule, and it seems to me a sensible one, but it is not necessary under the circumstances to decide that point." In the same case, however, *McDonell, J.* dissented from the Chief Justice and remarked: "I am doubtful whether in this country a notice by which a tenant is given his option either to pay an enhanced rent from a certain day or quit, should be held to be insufficient and invalid (see *Ahearn v. Billman*, L. R., 4 Ex. D. 202). I do not know of any cases in which this has been held, and certainly notices in this form have been not unfrequently given by landlords in this country." The learned Chief Justice seems to have overlooked a few other decisions on the same point:—In *Budan Molla v. Khotter Nath*, (20 W. R., 441), *Markby, J.*, observed: "According to English law, it would, I believe, be necessary for the landlord to give a positive notice to

quit before attempting to raise the rent; but having done that he could negotiate for a new letting on any terms he pleased, and if the tenant held on without any new agreement being come to, the landlord could recover for the occupation at a fair rate. "The only difference, therefore, is between a notice to raise the rent and a notice to quit. I do not think that these two notices substantially differ. I think a notice to raise the rent does in fact put an end to the tenancy on the existing terms, and that it leaves the tenant at liberty to quit his holding at the end of the year if he does not choose to pay the rent demanded."—(Compare *Kylash Chunder v. Woomanund*, 24 W. R., 413; *Hurry Doyal v. Ram Nidhi*, 1 Shome's Law Reporter, 161). Where several co-sharers have served a joint

notice to quit upon which notice they jointly institute a suit for the recovery of the land, the fact that one of the plaintiffs withdraws from the suit will not prevent the remaining plaintiffs from obtaining a decree for possession of their shares of the land—(*Dwarkanath v. Kali Chunder*, I. L. R., 13 Cal., 75) See notes under section 182.

46. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

Conditions of ejectment on ground of refusal to agree to enhancement.

46. (2) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served it shall for the purposes of this section be deemed to have been tendered.

This section embodies an entirely novel provision.

Sub-sections (1) and (2) :—Sub-section (1) seems to lay down a general principle that no suit in ejectment on the ground of refusal of an enhanced rent shall be instituted unless an agreement has been tendered, &c., and sub-section (2) then lays down how the agreement should be tendered. Some difficulty will take place as to how we are to interpret the words "may file" in sub-section (2). If "may" means "shall" sub-section (2) is only a corollary to sub-section (1), and the agreement must always be tendered through the Court or officer appointed by the Government. If the Legislature meant by the word "may" to give a discretionary power to the landlord the agreement might be tendered privately under sub-section (1) or through the Court or officer under sub-section (2). This is the more reasonable interpretation of the section.

"When the agreement is tendered to the raiyat out of Court, he will deny the tender, and when it is served through the Court, he will deny the service, and the experience of enhancement notices shows how extremely difficult it is for the landlord to prove tender or service." The result will be that ejectment will rarely, if ever, be successful.—(*Mr. Justice Field's Minute*).

"Section 46 (2).—The agreement under this section shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the raiyat in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court" (*Local Government Rules*).

46. (3) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

46. (4) When an agreement has been executed and filed by a raiyat under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

"Section 46 (4).—The notice under this section shall be filed in the suit having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure on payment of the process fee prescribed by the High Court," (*Local Government Rules*).

46. (5) If the raiyat does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

46. (6) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

The rule in this sub-section is according to the spirit of the decisions under the old Act. "The defendant," observed the Court in a case, "has no right of occupancy; when the plaintiff instead of giving him notice to quit the land, chooses to retain him as a tenant, and asks the Court to compel the tenant to enter into an engagement to pay rent, the Court is bound to see that it does not enforce the payment of any rates but such as are just and equitable.—(*Ram Mohan v. Madhoo Soodan*, 11 W. R., 384). This decision was in conformity with a Full Bench ruling which after many conflicting decisions settled the law on the subject, "It was contended," said Peacock, C. J., in delivering the judgment of the Court, "that the landlord may enhance the rent of a raiyat to any amount he pleases, and specify any grounds that he pleases for such enhancement; and that he is not bound to prove that any of such grounds exist, and that it is for the raiyat to prove that no such grounds exist. It appears to me that a landlord cannot enhance his rent, unless he states the grounds on which he seeks to enhance, and if those grounds are disputed, it will be for the Court to determine whether they exist, and whether they are such as to justify the enhancement."

Fair and equitable rent.—See sub-section (9) which follows, and section 24 *ante* and notes. Where the tenant was found to have no right of occupancy, and the landlord sought to enhance his rent, amongst other grounds on the ground that the land was situated on the banks of a navigable river, and that a Government road had been opened in the neighbourhood, it was held that he was entitled to do so—(*Pitambur v. Ramtanoo*, 10 W.R., 122.)

46. (7) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

46 (8) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

It seems that after determining what is a fair and equitable rent, the Court will have to give some *time* to the raiyat to express his intention as to whether he agrees or refuses to pay that rent, and then pass a decree for ejectment. The consent or refusal may, in exceptional cases, be taken at once with the determination of the fair rent.

46. (9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

This rule has been taken from the *Great Rent Case* which laid down that where the prevailing rate exists, that is the fair and equitable rent.

“Generally paid by raiyats” obviously means generally paid by *non-occupancy* raiyats. The rent of an occupancy raiyat need not, however, be necessarily disregarded in determining a fair and equitable rent.

47. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

Explanation of “admitted to occupation.”

Other incidents of a non-occupancy holding.

Right to sublet :—Section 85 *post* which treats of subletting is wide enough to include a non-occupancy raiyat, because the power to sublet is given to the ‘raiyyat,’ but in the case of a non-occupancy raiyat, whose status depends upon contract, the landlord may put in a condition of forfeiture upon subletting. And though section 178 (3) (e) protects an occupancy raiyat against a contract prohibiting subletting, it does not protect a non-occupancy raiyat from the effect of such a contract; and if we read clause (e) with section (c) and (d) of section 178, it seems to have been the clear intention of the Legislature that the landlord can by express agreement prohibit subletting by a non-occupancy raiyat. If the forfeiture

be stipulated in the contract, breach of the contract may give a good cause of action to the landlord to proceed under section 44 *ante*. But where subletting has not been expressly provided for in the contract, does a non-occupancy raiyat by subletting render his holding unfit for the purposes of his tenancy (section 44 b) ? That is a question of fact and will depend upon the circumstances attending the inception of the tenancy.

Inheritability:—Where there is a custom or usage, section (178) (3) (d) will govern the case. Death of the non-occupancy raiyat is no ground of determination of the tenancy; and possibly under the general principles of equity and good conscience, the heir of a non-occupancy will have the benefit of the remainder of the term of a registered or a *determined* lease. In the case of a tenancy without a lease, the tenancy will be considered as continuing from year to year, and equity will not allow it to be inheritable. A contrary view involves the risk of laying down that a non-occupancy holding is a permanent property, and will be in the hands of the heirs of the landholder as long as they are available—a proposition which is absurd.

Right to transfer:—Where there is a custom, section 178 (3) (d) will govern the case. Otherwise a non-occupancy raiyat may not transfer his holding.

CHAPTER VII.

UNDER-RAIYATS.

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, (namely) :—

Limit of rent recoverable from under-raiyats.

(a) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent. ; and

(b) in any other case—twenty-five per cent.

“Holding at a money rent” obviously qualifies “under-raiyat.” If it were the intention of the Legislature, as some commentators have argued, that these words should qualify “landlord,” a comma would have followed “under-raiyat.” Besides the expression “holding at a money rent” describes the status of a subordinate holder and therefore qualifies “under-raiyat.” To join that expression to the term “landlord” is to join two incongruous things. To find out the percentage would again be an intricate question if the latter hypothesis be adopted.

This section will have therefore no application where the under-raiyat pays rent in kind.

Registered lease: See pp. 203—206 *ante*.

49. An under-raiyat shall not be liable to be ejected by his landlord, except—

Restriction on ejection of under-raiyats.

(a) on the expiration of the term of a written lease;

(b) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

An "under-raiyat" is not a "raiyat" (see section 4 and notes, pp. 46-47) and therefore the provisions of Chapter VI will not apply to him *per se*, but on the principle that the limitations to which a landlord is subject govern also the tenant (compare section 194 *post*), the "under-raiyat" will be subject to section 44 *ante*, and notwithstanding that this section says that ejectment of an under-raiyat is not possible except under the grounds mentioned herein an 'under-raiyat,' it seems, will be subject to ejectment on other grounds, *e. g.*, breach of contract and so on.

This section should be read with section 66 *ante*.

It is doubtful if section 89 will apply to an under-raiyat. "Tenure," or "holding" includes the interest of a middle-man, or a raiyat, but not of an under-raiyat { see section 3 (9) } and section 89 refers to a tenure or under-tenure. But in the present case the benefit of section 89 will equitably apply to an under-raiyat also.

Notice to quit :—See notes at pp. 206-209. *ante*.

Other incidents of an under-raiyat's tenancy.

Right of occupancy :—See section 20, and notes at p. 96 *ante*.

Right to transfer :—His right to transfer depends upon custom—see section 83. So under the old law—(*Banumali v. Kailas Chunder*, I. L. R., 4 Cal., 135).

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

These provisions are meant to apply to all tenants and have therefore been characterised as 'general.' They include the following sub-heads (1) *Rules and presumptions as to amount of rent*, (2) *Alteration of rent on alteration of area*, (3) *Payment of rent*, (4) *Receipts and accounts*, (5) *Deposit of rent*, (6) *Arrears of rent*, (7) *Produce rents*, (8) *Liability of rent on change of landlord, or after transfer of tenure or holding*, and (9) *Illegal Cases &c.* There are other general principles which have been omitted, such as, (1) The conditions under which the relation of landlord and tenant exists. (2) Determination of that relation. (3) Conditions under which rent is payable and the relation continues. The 1st has been treated at pp. 3—9 *ante*, and the 2nd at pp. 9—12 *ante*. The 3rd will be treated under *Arrears of rent*.

Rules and presumptions as to amount of rent.

The following section has compressed sections 4, 16 and 17 of Act VIII of 1869 B.C., and corresponding sections 4, 15 and 16 of Act X of 1869.

50. (1) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

Rules and presumptions as to fixity of rent.

Section 4, provided: "Raiyats who, in any provinces to which this Act may, apply, hold land at fixed rates of rent, which shall not have been changed from the time of the Permanent Settlement of such province, are entitled to receive pottahs at those rates."

So section 16 of Act VIII of 1869 B.C. (section 15 of Act X of 1859) provided: "No dependent talukdar or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the rayat, who, in any province to which the provisions of this Act may apply, holds his taluk or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement, shall be liable to any enhancement of such rent, anything in section 51, Regulation VIII of 1793, or in any other law, to the contrary notwithstanding."

Tenure-holder or raiyat and his predecessors in interest.—The word "predecessors" seems to imply that in case of transfers, the purchasing tenant may add to his tenure the time of his predecessor, the outgoing tenant. Under section 4 of Act VIII of 1869 B.C., it has been held that the mode in which the tenant acquired the land did not affect the application of the rule—(*Tirthanund Thakur v. Herdu Jha*, 1 L. R., 9 Cal., 252; *Ram Nath v. Watson*, per Peacock, C. J., 1 R. J. P. J., 54; *Raj Kishore v. Hurechur*, 10 W. R., 429; *Kashi Nath v. Bama Sundari*, 11 W. R., 117.)

At a rent or rate of rent:—This phrase has been adopted in lieu of "fixed rates" which caused some difficulty (see pp. 92-93 *ante*).

"We have omitted from section 50, which enacts the well-known presumption arising from holding at a rent unchanged for twenty years, the sub-section which made the presumption applicable to produce-rents, as opinions generally were opposed to it"—(*R. S. C., No. III*).

Which has not been changed.—The change of Sicca rupees into Company's does not alter the fixity of the rate—(*Kalichurn v. Shoshee Dasee*, 1 W. R., 248, 356 (3 R. J. P. J., 353); *Khatyani Debia v. Soondari Debia*, 2 W. R., (Act X), 60 (4 R. J. P. J., 154); *Tarasoondari v. Sibesvar*, 6 W. R., (Act X), 51; *Watson & Co. v. Nundolal Sircar*, 21 W. R., 420). A Sicca rupee exceeds the Company's rupee by 1 anna 5 cowries and 1 kranti.

Trifling variation in the jumma. The variation of a few rupees between a raiyat's admitted jumma and the jumma of his *dowl* is not such a variation as to destroy the right of a fixed jumma—(*Huro Nath v. Ameer Biswas*, 1 W. R., 230). A nominal reduction or a trifling difference in the jumma, is not a variation that deprives the raiyat of the benefit of the presumption under this section—(*Ramruttun v. Chundramukhi*, 2 W. R., Act X, 74). The difference of 1 rupee in a jumma of 60 rupees was held to be not sufficient to destroy the presumption—(*Anandalal v. Hills*, 4 W. R., Act X, 33). A variation of one *anna* does not destroy the uniformity required by this section—(*Munsoor Ali v. Banno Sing*, 7 W. R., 282). A trifling difference in the jumma does not necessarily

affect the fact of an uniform payment—(*Elahi Bux v. Rupan Teles*, 7 W. R., 184). A variation in the rate of rent which does not affect the integrity of the *jumma* does not rebut the presumption of a holding at a fixed rent from the Permanent Settlement—(*Gopalchunder v. Mathurmohun*, 3 W. R., Act X, 132). Where a tenant showed uniform payment of rent for nineteen years, and a slight difference (two or three annas) in the rate for a long period prior thereto, he was allowed the benefit of the presumption under Act VIII of 1869 (B.C.),

section 4—(*R. Watson & Co. v. Nundolal Sircar*, 21 W. R., 420). Abwabs are not rents, and therefore the collection

Abwabs.

of abwabs in addition to rent does not constitute a variation which would affect the presumption of this section—(2 W. R., Act X, 93, 4 R. J. P. J., 308). An abatement of rent by order of a Civil Court

Abatement, surrender or alienation does not affect the presumption

in consequence of a diluvion does not prove alteration of the rate of rent, or affect a raiyat's claim to the benefit of the presumption arising under this section—(*Rouzoonesu v. Tookan Jha*, 10 W. R., 246). Where an abatement of rent is allowed in a lump sum upon a lump *jumma* on account of lands rendered unculturable by the overflow of a river, the abatement is not such a variation of the rate of rent as to debar the raiyat from the benefit of the presumption under this section—(*Radha Gobindo v. Kiamatulla*, 21 W. R., 401). When a tenant holding land which had paid an uniform rent since the Permanent Settlement, relinquished a portion of his holding, and received a fresh pottah from his landlord, in which a deduction was made for the relinquished land, it was held that the fixity of rent for the remaining portion was not affected by the arrangement. The pottah was merely the confirmation of the tenancy already existing—(*Kenaram v. Ramkoomar*, 2 W. R., (Act X, 17). . So a diminution in the *jumma* caused by the alienation of a portion of his jote does not deprive a raiyat of the benefit of the presumption of section 4. *1b*. The sale of a portion of a tenure involving a distribution of the rent over two parts does not amount to a change of rent within the meaning of section 4 of Act VIII of 1869 (B.C.), so as to deprive the defendant of the benefit of the presumption under that section—(*Soodha Mukhi v. Ramgatti*, 20 W. R., 419). But the purchaser of several holdings of cultivating raiyats cannot, by uniting them and paying one rent for the whole, change their character without the consent of the landlord—(*Moula Buksh v. Jadoonath*, 21 W. R., 267).

A mere alteration in the rate of rent will not prove variation, unless the

Mere alteration in the rate of rent, or an ex-parte decree does not destroy the presumption.

tenant submitted to or paid the enhanced rent—(*Gopal Mundie v. Nobo Kishen*, 5 W. R., Act X, 83). But, on the other hand, it is not uniformity in the amount actually paid that is required to raise the presumption, but only the uniformity in the rate agreed upon, either express or implied, between the parties to be paid—(*W. Moran v. Anand Chunder*, 6 W. R., Act X, 35). *Ex-parte* summary decrees are not satisfactory proof that a variation has taken place in the amount of the rent paid so as to destroy the presumption under section 4, Act X—(*Kaleekanto v. Bibi Ashrufunnesa*, 2 W. R., 326; *Joykishore v. Gopallal*, 6 W. R., Act X, 28). A putnidar is protected from enhancement under section 15, Act X, notwithstanding a decree passed before that Act, by which the zemindar was declared entitled to enhance, the latter having omitted to take any effectual steps before the Act to vary the rent since the Decennial Settlement—(*Gobind Chunder v. Haronath*, 5 W. R., Act X, 10; *contra*, see also *Kalee Chunder v. Ruttun Gopal*, 11 W. R., 571). In a suit for enhanced rent brought by a landlord under Act X, the benefit of the presumption under section 4 arising from twenty years uniform payment of rent cannot avail the

Res judicata. Effect of decrees.

riayat against a former decree of a competent Court declaring his holding liable to enhancement—(Rakhal Dass v. Shaik Golan, 2 W. R., Act X, 69). This decision was adopted by the Privy Council as to the presumption under sections 15 and 16 referring to under-tenants or talukdars—(Nufferchunder v. Jonathan Poulson, 19 W. R., 175, P. C.; 12 B. L. R., 153; and Hurro Nath v. Gobind Chunder, 23 W. R., 352; P. C. 15 B. L. R., 120; L. R., 2 I. A., 193). So a decree of the late Sudder Court fixing an enhanced jumma for a certain jote, passed before the promulgation of Act X, was held not to have become ineffectual by the fact of no rents having been recovered under it—(Doorga Churan v. Doya Moyee, 20 W. R., 243). And the acceptance of old rent for years subsequent to the date of a decree enhancing the rent, is no waiver to plaintiff's claim to the higher rate decreed—(Mr. Lander v. Benode Lall, 6 W. R., Act X, 37. See also Wooday Narain v. Tarini Churan, 11 W. R., 496). On the other hand where a tenant's title to mokurari tenure is established under a judicial decree of 1792, he having been at some time forced to pay a larger rent than was due will not render him liable to enhanced rent for ever—(Goluk Chunder v. Sandes, 5 W. R., Act X, 32). In a suit by the present defendant against the present plaintiff for enhancement of rent, the Court of first instance and the High Court gave plaintiffs decrees for enhanced rent. The Privy Council in the year 1873 reversed those decrees, and held that the rent could not be enhanced. Before the date of the Privy Council judgment, the present defendant obtained several other judgments for enhanced rent against the present plaintiff. No application was made by him for review of those judgments, but in 1875 he brought this suit to recover the difference between the amount of enhanced rent recovered, and the fixed rent which he was bound to pay. Held by Macpherson, Markby and Ainslie, J.J., that the decrees for enhanced rent were superseded, as the former class of decrees are *ipso facto* superseded so far as the controlling decree is nullified, and that such a suit as the present one would lie—(Joges Chunder v. Kali Churan, 1 L. R., 3 Cal., 30, F. B.; Mahomed Elahee Buksh v. Kalee Mohan, 1 L. R., 5 Cal., 589; Shama Prosad v. Hurro Prosad, 10 Moo. I. A., 203; 3 W. R. P. C., 11). Plaintiff sued defendant in 1873 for arrears of rent at a certain rate. Defendant pleaded that the land had been held by him at an uniform rent for more than twenty years, and this contention was supported by the Court. Plaintiff then gave the defendant notice of enhancement and sued to recover rent for two years at the rate stated by defendant and for one year at an increased rate. To this suit defendant raised substantially the same defence: *Held* that the decision in the previous suit was not a bar to the present suit, there being two questions for consideration, *viz.*, whether there had been an uniform payment of rent for twenty years and if so, whether the presumption, which the law directs to be drawn from such uniform payment, had been rebutted by the plaintiff; neither of which questions had been concluded by the previous decision—(Gopce Mohan v. Hills, 1 L. R., 3 Cal., 789). The question in this case depended upon the pleadings in the former suit. Markby, J., observed: "One of these questions (the 2nd) was not, and could not be gone into in the previous suit. It has nothing whatever to do with the former case, where the landlord received different rates of rent at some earlier period. No doubt the Court in the former case did express an opinion that for twenty years rent had been paid at an uniform rate; but even that was not a question in issue in the former suit, and in such a manner as to make the decision in the former suit for enhancement of the rent of a share in a dependant taluk, the zamindari under which the taluk was held was partitioned under a butwara among the zemindars. A ten-anna share was allotted to one (the present plaintiff), a four-anna share to another, and a two-anna share to a third. The taluk-

dars continued to hold the entire property, and paid the rent apportioned by law severally to each of the parties entitled. In 1861 the owner of the two-anna share obtained a decree against the talukdars for enhancement of the rent of his share. In the present suit against the same talukdars, the defendants contended that the rent of their taluk had not been changed for a period of more than twenty years before suit. It was held that the taluk, which was intended by section 17 of the Rent Act, was the original taluk, and that if the defendants could show that the rent of that taluk had remained unchanged, either in its original entirety or apportioned as it had been under the butwara, they would be entitled to the benefit of the section; but that the decree in the suit of 1861 had the effect of enhancing the rent payable for the whole taluk, and that the plaintiff could avail herself of that decree, though she was not a party to it—(*Sarat Sundari v. Anunda Mohan*, I. L. R., 5 Cal., 273). N brought a suit against P for enhancement of rent. P's defence was (1) that no notice of enhancement had been given; (2) that the rent was not enhanceable, as he and his predecessors in title had held it at a fixed rent from the date of the Permanent Settlement. The suit was dismissed on the ground that no notice had been given; but the Munsiff stated in his judgment that he considered the rent enhanceable, because he did not believe in the genuineness of the documentary evidence produced by P. The decree merely ordered that the suit should be dismissed, the portion of the judgment as to the enhanceability of the rent not being embodied in the decree. P therefore had no right of appeal against that portion of the judgment. In a subsequent suit by N against P for enhancement of rent of the same tenure, it was held that P was precluded by the decision in the former suit, from denying that the rent of the tenure was enhanceable, although the decision on that point was not embodied in the decree—(*Niamut Khan v. Phadu Baldia*, I. L. R., 6 Cal., 319 F. B.). In *Nundlal v. Bodhoomukhy*, I. L. R., 13 Cal., 17, the correctness of this decision was doubted and relying upon a portion of the judgment of *Ran Bahadur v. Luchu Koer*, I. L. R., P. C., 11 Cal., 301, it was maintained that where a former suit between the same parties in respect of the same subject matter has been dismissed on a preliminary point, a finding in that suit as to the merits in the plaintiff's favor will not bar the defendant from putting forward the same defence on the merits in a subsequent suit by the same plaintiff against the same defendant.

In deciding cases under this section, it is only necessary to consider whether the riyat has held at a fixed rent and from the Permanent Settlement. For definition of 'Permanent Settlement,' see sub-section 12 of section 3 *ante*. "The right of exemption from enhancement is founded upon the simple fact of the land having been held at a fixed rate of rent from the time of the Permanent Settlement. When it is

If land has been held at a fixed rent from the Permanent Settlement the nature of the holding need not be considered.

proved that the land has been so held, no further question arises as to whether it was so held under an *istemurari* or *mokurari* potta, or whether the person claiming the right to enhance is an auction-purchaser or not. Sections 3 and 4 of Act X make no mention of the nature of the potta under which the land has been held, or of the right under which a fixed rent has been paid without alteration, but exempt from assessment lands which have been held at fixed rents from the time of the Permanent Settlement. The presumption required to be made is not that the land has been held by the riyat and his ancestors, or by him and the persons who had power to alienate it to him, but simply that it has been held at a fixed rent."—(*Ram Nath v. Watson*, 1 Board's Rep., 169, *per* Peacock, C.J.)

When a raiyat has held at a fixed rent from the time of the Permanent Settlement, he is entitled to demand a potta at the fixed rate at which he has held, and his rent can be enhanced even by an auction-purchaser at a sale for arrears of revenue—(*Saduk v. Mahamaya*, 6 W. R., Act X, 16; 1 Ind. Jur., 77.) The raiyat is equally protected, whether the sale of the estate was made under the former sale law, Act I of 1845, or the existing law, Act XI of 1859. Under Act I of 1845, section 26, a tennure was only secure from enhancement when it had been held at a “fixed rent more than twelve years before the Permanent Settlement;” but this has been modified by section 1 of Act X, of 1859, which says, that such parts of section 26, Act I of 1845 as relate to the enhancement of rents and ejection of tenants by the purchaser of an estate sold for arrears of Government revenue, are declared subject to certain modifications, one of which is that contained in section 3, viz., that a raiyat who has held at a fixed rate of rent, which has not been changed from the time of the Permanent Settlement, is entitled to receive a potta at that rate—(*Hurryhur v. Puddo Lochan*, 7 W. R., 176, F. B.) Auction-purchasers at a revenue sale were declared entitled, after notice duly given, to enhance the rents of all under-tenures and to eject all under-tenants with the following exceptions, and clause 2 of section 26 of Act I of 1845, and Act XII of 1841, gave the first and second exceptions, viz., (1) *Istemrari* or *Mokurari* tenures held at a fixed rent more than twelve years before the Permanent Settlement; (2) tenures existing at the time of the Decennial Settlement, but not proved to be liable to increase of assessment on the grounds stated in section 51, Regulation VIII of 1793. Clause 2 of section 37 of Act XI of 1859 made however exceptions for (1) *Istemrari* or *Mokurari* tenures held at a fixed rent from the time of the Permanent Settlement; (2) tenures existing at the time of Settlement, which have not been held at a fixed rent, provided always, that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures. It will thus appear that under clauses 2 of sections 27 and 26 respectively of Acts XII of 1841 and I of 1845, the tenures, if shown to be in existence at the time of the Decennial Settlement, were protected from enhancement, unless the auction-purchaser could prove their liability thereto; under the corresponding clause in Act XI of 1859, the tenant is protected from ejection but is liable to enhancement unless he can prove that he held at a fixed rent from the time of the Permanent Settlement. The burden of proof in this latter case is, however, considerably lengthened by the twenty years’ presumption of sections 4 and 16 of Act X of 1859 (sections 4 and 17 of Act VIII of 1869 B.C.), corresponding to the present section. A tenant who has held land since the Permanent Settlement, but at a varying rate, acquires no right under this section; his position is in no respect superior to an ordinary raiyat with a right of occupancy; and consequently he is only entitled to a potta at fair and equitable rates—(*Dinabandu v. Ramdhan*, 9 W. R., 522.)

Except on the ground of an alteration in the area of the holding or tenure.—The use of the word “alteration” is not very happy. Alteration implies a change by addition or subtraction. If a tenant holds ostensibly a certain quantity of land, but it is found on measurement that he holds more than what he professes to hold, can we say that there has been an alteration in the area? For notes under this head, see section 52 of the Act.

In any suit or other proceeding under this Act.—Probably the words

Whether the presumption applies to a talukdar.

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“in any suit under this Act” were not intended to limit the presumption to cases under this Act—(Per Norman, J., in *Dakhina Mohan v. Kureemalla*, 12 W. R., 243.) Under this ruling it is doubtful whether the presumption of twenty years could not be urged in a suit by a zemindar against a talukdar for enhancement of rent under Regulation VIII of 1793, section 51. This point has been now settled by the decision of *Huro Nath v. Gobind Chunder*, 23 W. R., 352, P. C., their Lordships holding that even a dependent talukdar who, under section 51, Regulation VIII of 1793, might otherwise be liable to enhancement was exempted by section 15, Act X, if he held his tenure otherwise than under a terminable lease and at a fixed unvarying rate from the Permanent Settlement.

50. (2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate

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Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy, or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

Section 4 of Act VIII of 1869 ran as follows: “Whenever in any suit under

The old law.

this Act it shall be proved that the rent at which land is held by a raiyat in any such province has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.” And section 17 of Act VIII of 1869 B. C. (section 16 of Act X of 1859) provided: “Whenever in any suit under this Act, it shall be proved that the rent at which a taluk or other tenure is held in the said provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such taluk or tenure has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period.”

If it is proved that, &c.—In a suit for enhancement there must be legal evidence or *proof* of twenty years’ uniform rent before defendant can obtain the benefit of the presumption under section 4, Act X of 1859—(*Raj Narain v. Atkins*, 1 W. R., 45; 3 R. J. P. J., 161. See also 3 W. R., Act X, 148; *Ram Kishore v. Chand Mundul*, 5 W. R., Act X, 84). It would not be generally sufficient for the raiyat to swear that he has paid rent at a uniform rate for more than twenty years without proving such payments by dakhilas or other good independent evidence—(*Huro Chunder v. Mohesh Chundra*, 5 W. R., Act X, 89; *Kalee*

Proof necessary to establish the presumption.

Koomaree v. Shumboo Ohunder, 6 W. R., Act X, 23; Prem Shahoo v. Sheik Nyamat Ali, *ib.*, Act X, 89; Ananda Sundari v. Doorga Moni, *ib.* Act X, 91). A raiyat is bound to give strict proof of a uniform payment of rent for twenty years. That is a matter which should not be decided in his favor on mere inference—(Sham Lall v. Boistub Churn, 7 W. R., 407). The evidence must go the distance of twenty years at least—(Bungo Chandra v. Ram Kanye, 10 W. R., 256). The presumption cannot be established by imperfect and unproved evidence—(Sree Nath v. Poglian, 17 W. R., 374). On the other hand it has been held that a raiyat is not bound to file *dakhilas* in order to establish the presumption allowed by Act X of 1859, section 4, if he can establish it by other good independent evidence—(Radha Gobind v. Shama Sundari, 21 W. R., 403; Elahce Bux v. Rupan Tilee, 7 W. R., 284; Gobinda Kurmoker v. Kumud Nath, 3 W. R., Act X, 148). The sworn declaration of the raiyat that the rent had not varied for more than twenty years corroborated by the records of the Collectorate which showed that the rent had been the same as it had been more than thirty years ago, was sufficient to warrant the presumption—(Raj Doorlub v. Mohessur Bhutt, 10 W. R., 364). A uniform payment may be proved by evidence very much short of the production of receipts for each and every year during such period—(Komal Lochan v. Zamiruddin, 7 W. R., 417). Nor need he prove receipts for twenty consecutive years before the date of suit, if he happens to have lost the *dakhilas* for one or two years—(Katyance Debi v. Sundari Debi, 2 W. R., Act X, 60; 4 R. J. P. J., 154); more especially where the landlord refuses to take rent a few years before suit—(Gyaram Dutt v. Goroo Churan, 2 W. R., Act X, 59). As to proof of uniform rent for twenty years the decisions all tend to show that it is not necessary to prove for each separate year of the twenty, provided that the receipts extend over that period—(Harro Nath v. Chitra Moni, 3 W. R., Act X, 122; so 1 W. R., 280; 3 R. J. P. J., 155). But proof of uniform payment must be shown, if not for every year in twenty years, at least for the greater portion of that period, and for years in the earlier as well as in the later portion of the same—(Sarno Moyi v. Baboo Khan, 9 W. R., 270). The most recent explanation on this point is thus given by Phear, J.: "We will add that the Judge ought not to presume a uniform rent for twenty years preceding suit upon evidence which only touched a portion of that period. For instance, suppose the evidence to satisfy him that the rent had been uniform for eighteen years before suit, he would be wrong in presuming from that alone that it must have been uniform for two more also, or in other words, for twenty years on the whole. On the other hand, to support a finding of uniformity for any given number of years, it is not necessary that there should be evidence bearing directly upon every year of that number. It is sufficient if the whole space of that time is included between limits upon which the evidence bears, provided that the evidence is such as to lead to the belief that the rent was uniform throughout the intervening period"—(Foschola v. Harro Chunder, 8 W. R., 284; Rush Behari v. Ram Kumar, 22 W. R., 487). If the evidence in a case shows that during the period for which receipts are not produced, the raiyat was paying at a different rate of rent, that evidence must be considered with the receipts that are produced—(Gobinda Chandra v. Romani Dasi, 6 W. R., Act X, 42). "The varying amounts of rent paid by the defendant in each year are not inconsistent with the uniformity in the amount of payment required by law to warrant the presumption. It is not uniformity in the amount actually paid that is required to raise the presumption, but only uniformity in the rate agreed upon"—(Meran & Co. v. Ananda Chandra, 6 W. R., Act X, 35). "It is quite possible that a raiyat may not have paid his rent regularly, in which case there would be a variation in the amount of rent

as shown by the receipts. If this kind of variation were to be the test, no raiyat would be safe, and the object of the law would be frustrated"—(Sham Charan v. Dwarka Nath, 19 W. R., 100). On the other hand, the amount of rent paid is not conclusive evidence of the amount of rent at which land is held but may be rebutted by showing that the rent is greater or less—(Ananda Moyi v. Rancee Surnomayi, 6 W. R., Act X, 83).

As a general rule, dakhilas should be attested or proved by oral evidence in the same manner as all other documentary evidence.

Evidence required to prove receipts.

The tenant cannot be expected in every case to summon all the gomastas of his zemindari for the past 20 or 30 years to attest his dakhilas. He may attest the dakhilas himself which were given to him personally—(Rajessuri v. Srinath, 4 W. R., Act X, 42; Dumaine v. Oottum, 13 W. R., 463; cf. 5 W. R., Act X, 11, 53; 6 W. R., Act X, 83; 7 W. R., 15, 91, 105, 533; 8 W. R., 517; 10 W. R., 107, 490; 11 W. R., 105, 170; 17 W. R., 346). If a raiyat produces dakhilas and swears that he received them from the landowner or his agent, or gives other *prima facie* evidence of their genuineness, and the landlord or his agent does not come forward and deny them or give evidence to show that they are not genuine, they may be taken as *prima facie* evidence against him, if the evidence of the raiyat is believed. But this genuineness is not to be presumed merely because they are not disputed by the landlord. There must be some *prima facie* evidence given to show their genuineness—(Kritibash v. Ramdhun, 7 W. R. F. B., 526; 2 Ind. Jur., 197; Ramjodu v. Sukhlie Narain, 8 W. R., 488; Gunganarain v. Saroda Mohan, 12 W. R., 30; Raj Rahomed v. Banoo Lashma, 12 W. R., 34; Madhub Chundra, v. Raja Promothouath, 20 W. R., 264; cf. 9 W. R., 147, 241; 14 W. R., 211; 20 W. R., 264). Dakhilas unattested or attested only by the evidence of a manager or amooktear of the defendant, are no legal evidence of uniform payment of rent—(Reezoonnisa v. Bookoo Chowdrain, 12 W. R., 267; see also 12 W. R., 350).

The value to be attached to jumma-wasil-baki and canungoe papers as proof on the part of the plaintiff in rebutting the presumption

Value of jumma-wasil-baki and other zemindari papers as evidence.

of a uniform rent was discussed by Norman, J., as follows: "A jumma-wasil-baki might be admissible under section 43, Act II of 1855, as a book regularly kept in the way of business, but as such it would be corroborative and not independent proof of the facts stated therein: very possibly the paper may be made evidence. The writer of it may be produced. Refreshing his memory from the paper (see section 45) he might be able to state what rent the defendant paid in the year in question; and then to corroborate his testimony, the paper may be put in under section 43. If it is proved that the writer is dead and cannot be found, the document may be put in as an entry made in the ordinary course of business under section 39, Act II of 1855. As to the canungoe papers, it is not stated that the estate was held *khas* or under attachment in 1227; and if not, it is probable that the entries in the canungoe papers are not evidence against the defendant. If they simply give the rate of rent, they will probably have been made from mere hearsay in the first instance—(Kheromoni Dasi v. Bijoygobind, 7 W. R., 533.) Jumma-wasil-baki ought not to be regarded as anything else than "books proved to have been regularly kept in the course of business," and by section 43, Act II of 1855, they are "admissible as corroborative, but not as independent proof of the facts therein stated." They are consequently insufficient by themselves and without independent proof to rebut the presumption which arises under section 4, Act X of 1859, in favor of the defendant who has been found to hold lands at a uniform payment of rent for more than 20 years—(Ram Lal v. Tara Soondari, 8 W. R., 280; Sheik Newazi v. Mr. L. Lloyd, *Id.* 464; Bejoy

Gobinda v. Bheko, 10 W. R., 291; Mohimchundra v. Poorno Chundra, 11 W. R., 165). A jumma-wasil-baki paper is a private memorandum made for the zemindar's own use, and that of his servants, and must therefore be looked on with great suspicion. It should be attested and proved by the best evidence, *i. e.*, of the writer himself—(Adait Chaitaman v. Jugalchundra, 5 W. R., 242; cf. section 67 of Act I of 1872). Hence where the raiyat proved a uniform payment for 20 years, it was held that the presumption was not rebutted by the omission of all mention of the holding in certain jumma-wasil-baki papers produced from the office of the canungo and dated 1229—(Ram Lochan v. Bannasundari, 6 W. R. Act X, 95). Similarly jumma-bundi papers, like books of account can only be used as corroborative evidence—(Chamarnee Bibi v. Aenulla Sirdar, 9 W. R., 451; Gujjo Koer v. Synd Aulay Ahmed, 14 W. R., 474). The evidence of the putwari as to previous collections, corroborated by the jumma-bundi papers of three years is conclusive in a suit of rent—(Dhanukdhari v. Mr. George Toomy, 20 W. R., 142). The jumma-bundi papers are, however, valueless without the evidence of the putwari—(Pundit Bhugwan Datt v. Sheomungal, 22 W. R., 256). Section 34 of Act I of 1872 has, however, altered the law as laid down by section 43 of Act II of 1855, and jumma-wasil-baki papers are independent evidence in a suit for enhancement of rent to rebut a presumption arising from uniform payment for 20 years—(Vilact Khan v. Rashbehari, 22 W. R., 549). "Now it would appear," observed in this case, Markby, J., "that prior to the late Evidence Act, these papers would not have been admissible to prove that fact unless some other evidence tending to establish the same fact had also been given. This was so held in a case reported in the 8th Weekly Reporter, p. 280. The language of the Statute that was then in force differs, however, very materially from that of the present Act. By Act II of 1855, section 43, documents of this kind were declared to be only admissible as corroborative, but not as independent proofs of the facts stated therein; that language has not been adopted in the present Act. The only limitation in section 34 is that statements contained in documents of this kind shall not alone be sufficient evidence to charge any one with liability. It appears to me that this change of expression has made a substantial alteration in the law, and I do not consider that it can be said that these documents have been used alone in order to charge the defendant in this case with liability that has been imposed upon him. He is charged with the rent of the land he occupies by reason of its occupation by him, that rent being considered to be a fair and equitable rent for the land occupied; and what these documents have been used for is not to charge him with liability, but to answer the claim which he set up to exemption from what would be the ordinary liability of a tenant." So where jumma-wasil-baki papers are produced at the citation of the raiyat himself, they are not merely corroborative but good and sufficient evidence as against the latter in rebutting the presumption under this section—(Shib Persad v. Promotho Nath, 10 W. R., 193). But zemindar's papers filed and attested by gomastas are not conclusive proof of variation, unless it can be shown "not merely that the jumma-wasil-baki and similar papers show a varying rate, but that the raiyat has paid at a varying rate—(Gopal Mundle v. Nobokishan, 5 W. R., Act X, 83). Thus it has been held that jumma-wasil-baki papers are not admissible as independent evidence of the amount of rent mentioned therein; but it is perfectly right that a person who has prepared such jumma-wasil-baki papers on receiving payment of the rents, should refresh his memory from such papers when giving evidence as to the amount of rent payable.—(Akhal Chundra v. Naya, I. L. R., 10 Cal., 248). A jumma-bundi prepared by a Deputy Collector while engaged in the settlement of land under Regulation VII of 1822, is a public document within the meaning of section 74 of the Evidence

Act, and it is not necessary to show that at the time when such document was prepared, a raiyat affected by its provisions was a consenting party to the terms therein specified—(*Tara Patro v. Abinash Chunder Dutt*, 1 L. R., 4 Cal., 79.)

For other decisions on this subject see *Arrears of Rent*, *post*.

During 20 years &c.—A raiyat is bound to give strict proof of a uniform payment of rent for 20 years immediately preceding the commencement of twenty years' suit—(*Rajnarain v. Atkins*, 1 W. R., 45; *Mnsst. Mahmeda Bibi v. Haradhun*, 5 W. R., Act X, 12.) The meaning of this section is that where, at the time of the commencement of the suit, land is held by a raiyat, and has been held by him, or by some person through whom he claims, at the same rent for a period of 20 years next before the commencement of the suit, the presumption specified in the section shall be made. In other words, there must have been a holding for 20 years next before the commencement of the suit at a rent which has not been changed during that period—(*Lateefunnisa Bibi v. Poolin Behari*, 1 Hay's Rep., 242.) But the proof of uniform payment of rent up to the date of suit is not absolutely necessary to entitle a raiyat to the benefit of the presumption in a case where the landlord refuses to take rent for a few years before suit—(*Gyaram v. Gooroochurn*, 2 W. R., Act X, 59.) In cases of saleable tenures, the period of possession by the raiyat's vendor is included in the 20 years mentioned in this section—(*Kaza Newaz v. Nubokishore*, 5 W. R., Act X, 53). In a suit for enhanced rent, the presumption from uniform payment of rent for 20 years was held not rebutted by the mere fact that the defendant had acquired the tenure from another person originally in 1226—(*Sanji Lall Ramnarain v. Nudua Panda*, 22 W. R., 475). Or by the existence of a kabuliyat for the year 1245, such a kabuliyat being as much consistent with the confirmation of a pre-existing rent as with the settlement of a new rent: the presumption from uniform payment of rent for 20 years can only be displaced by positive proof to the contrary—(*Soorjamani v. Peary Mohun*, 25 W. R., 331.) On proof of payment of a uniform rent for 20 years, the presumption imperatively arises from the time of the Permanent Settlement—(*Rakhaldas Tewari v. Konooram Haldar*, 7 W. R., 242). For other cases see notes under the head—“*which has not been changed*.” A break or interruption in the holding of the land would be sufficient to rebut the presumption. But if a raiyat holding at a particular rent was unlawfully evicted, he would not necessarily cease to hold at that rent. “Eviction, though it would put an end to the raiyat's possession, would not destroy his holding; and therefore if the raiyat is restored to possession, he is restored to this original holding, if that holding would not have ceased to exist but for the eviction”—(*Lateefunnisa Bibi v. Poolin Behari*, W. R., Sp., 91). The break of one year in 20 is not sufficient to rebut the presumption that the receipts for 19 years prove the payments of uniform rent—(*3 W. R., Act X, 122; Radha Moyi v. Aghorenath*, 25 W. R., 384).

A break in the holding.

particular rent was unlawfully evicted, he would not necessarily cease to hold at that rent. “Eviction, though it would put an end to the raiyat's possession, would not destroy his holding; and therefore if the raiyat is restored to possession, he is restored to this original holding, if that holding would not have ceased to exist but for the eviction”—(*Lateefunnisa Bibi v. Poolin Behari*, W. R., Sp., 91). The break of one year in 20 is not sufficient to rebut the presumption that the receipts for 19 years prove the payments of uniform rent—(*3 W. R., Act X, 122; Radha Moyi v. Aghorenath*, 25 W. R., 384).

It shall be presumed, &c.

The grounds on which a raiyat can still claim the benefit of the presumption in cases where he sets up a potta may be said to be summarised in the following Full Bench case, where Peacock, C.J., in delivering judgment, says: “Then comes the question, what would comply with those words unless the contrary be shown, or unless it be proved that such rent was fixed at some later period? If a defendant sets up that he came in under a potta subsequent in date to the time of the Permanent Settlement, it appears by his own showing that he has not held from the date of the Permanent Settlement. But if he should say, “I hold under a potta prior to the time of the Permanent Settlement, and I have been paying rent for the last 20 years at a uniform rate, and should prove that he had held at the same rate of rent for a period of 20 years next before the com-

When benefit of presumption can be claimed.

commencement of the suit, the fact of his having stated that he held under a potta would not deprive him of the benefit of the presumption arising from the uniform payment of rent even if he should fail to prove that his potta was genuine." So, if he were to say "I have held for a period of 20 years at the same rate, and I hold a potta of a date subsequent to the Permanent Settlement, but that potta was granted to me in confirmation of a prior holding," that would not rebut the presumption arising from the proof of his having held at a rent which has not been changed for a period of 20 years next before the commencement of the suit. It is only when by evidence or by his own showing it appears that his holding commenced, or that his rent was fixed at a period subsequent to the date of the Permanent Settlement that the presumption created in his favour by section 4, Act X of 1859, is rebutted. A raiyat is not precluded from the benefit of his having held at a fixed rate of rent which had not been changed from the date of the Permanent Settlement, or of any presumptive evidence to that effect merely from the fact of his stating that he held under a potta not inconsistent with that presumption, though he might fail to prove the potta"—(*Grish Chunder v. Kali Krista*, 6 W. R., Act X, 58). As a confirmation of the views above expressed, the Privy Council says: "A potta may be a confirmatory grant only; there is nothing in accepting such a grant inconsistent with the presumption that a prior title existed"—(*Ram Chunder v. Jogesh Chunder*, 19 W. R., 353). But the setting up of a potta found to be a forgery was held to be no bar to the presumption arising under this section—(*Ishur Chunder v. Nitya Nund*, 6 W. R., Act X, 70).

On the other hand if a raiyat pleads a holding for more than twenty years,

at a uniform rent on a potta subsequent to the Permanent Settlement, the defence voids the presumption, and the case must be decided according to the potta—(*Luchmee Persaud v. Ram Gholam*, 2 W. R., Act X, 130; *Watson & Co. v. Choto Joora*, Marsh. 68; *I Hay*, 232). In a suit for enhancement of rent where a lower Appellate Court decided that the tenure originated in 1200 under a kabulyat, and that there was no presumption under this section, it was held that there was no error of law—(*Mahomed Mauoo v. Sheik Mahomed Asanullah*, 17 W. R., 349; *Ramlal v. Lalla Petumlal*, Marsh. 403; *Kundu Misser v. Gunesh Sing*, 6 B. L. R., App., 120; 15 W. R., 193; *Hureo Kishon v. Sheik Baboo*, 1 W. R., 5; *Ram Kishon v. Meeah Delerali*, Sp. W. R., Act X, 36). But the production of a potta of a date subsequent to the Permanent Settlement, if not inconsistent with the inference that it is a continuance of a former state of things, will not deprive the raiyat of the benefit of the presumption under this section if he can prove a uniform payment for twenty years, previous to the commencement of the suit—(*Kishon Mohan v. Eshan Chunder*, 4 W. R., Act X, 36; *Peary Mohan v. Koylash Chunder*, 23 W. R., 58; *Ram Chunder v. Jogesh Chunder*, 19 W. R., 35, P. C.; *Sooja Mani v. Peary Mohan*, 25 W. R., 331). The mere existence of a potta and an amulnama of a date subsequent to the Permanent Settlement is not conclusive evidence that the rate was then changed or was first fixed—(*Luchman Narain v. Koodil Kant*, 6 W. R., Act X, 46). But where a raiyat cannot show that his potta is only confirmatory of a previous holding, his possession dates from the date of the potta, and he will not be entitled to the benefit of the presumption—(*Sheik Jainuddin v. Poorno Chunder*, 8 W. R., 129; *Watson & Co. v. Anjrunna Dasi*, 10 W. R., 107). A person by taking a perpetual potta after the Permanent Settlement at the same rate as paid by the former holders, must be considered to have acquired a new tenure, and is not protected from enhancement on the ground that the former holders held at the present rate from before the Permanent Settlement—(*Ram Chunder v. Romesh Chunder*, 2 W. R., Act X, 47).

When a defendant wishes to avail himself of the benefit of the presumption

The pleadings must be consistent with the fact of holding from Permanent Settlement.

of an unchanged rent for twenty years, he must take care that there is nothing in his pleadings which is inconsistent with a holding from the time of the Permanent Settlement. Thus in *Watson & Co. v. Chota Joorra, Marsh.* 68, the defendant set up a potta which had been granted in 1212 at a rent of Rs. 12 per annum, and alleged that he had been in possession more than fifty-seven years at that rent, but did not plead possession from the time of the Permanent Settlement; it was held by the Court that the defence itself rebutted the presumption. "Section 4," observed Peacock, C. J., "makes the payment of rent for twenty years, without alteration of the amount, presumptive evidence that the land has been held at that rent from the time of the Permanent Settlement; and unless the presumption is rebutted, the raiyat is entitled by section 3 to a potta at that rate, and his rent consequently cannot be enhanced. But in this case the defendant did not rely upon the fact that the land had been held at a rate of rent which had not been changed from the time of the Permanent Settlement, but upon a potta alleged to have been granted in 1212, long after the Permanent Settlement. His own defence rebutted the presumption; and although he failed upon the ground that the potta was not a genuine one, he never alleged in his answer that the rent of Rs. 12 had been paid from the time of the Permanent Settlement, as he ought to have done, if he intended to rely upon that defence"—*Marsh.*, 68. At the same time it is not absolutely necessary that the occupation from the time of the Permanent Settlement should be actually pleaded, provided there is nothing in the defendant's answer inconsistent with such fact. "When the raiyat tenders proof and succeeds in proving that he has paid rent at one uniform rate for twenty years, then the presumption imperatively arises, unless the contrary be shown, that the rent has been unchanged from the time of the Permanent Settlement, and upon that presumption so arising the defendant is entitled to the whole legal consequences of that state of things. If the tenant succeeds in proving that he has held at one uniform rate for twenty years, then the Court is bound to go on, and presume that the land has been held at that rent from the time of the Permanent Settlement"—(*Rakhal Das v. Kinoo Ram*, 7 W. R., 242; see also *Harruck Sing v. Toolsi Ram*, 11 W. R., 84; *Mon Mohan v. Husrut Sirdar*, 2 W. R., Act X, 39. To the same effect are *Gooroo Das v. Sheik Durbaree*, 5 W. R., Act X, 16; and *Munee Kurnika v. Anunda Moyi*, 8 W. R., 6; *Blairub Chunder v. Muty Mundle*, Sp. W. R., Act X, 100). The defendant therefore need not plead in words that the tenure is "from the Decennial Settlement." A plea that the tenure is the grandfather's, inherited by succession and of long standing, is sufficient—(*Hem Chunder v. Purno Chunder*, 3 W. R., Act X, 162). Such terms as "for a long time," "for more than forty or seventy years," "for a long series of years," "from generation to generation," &c., entitles the raiyat to the presumption of this section—(*Ramrathon v. Chundra Mukhi*, 2 W. R., Act, X, 74; *Jugo Mohan v. Purno Chundra*, 3 W. R., Act X, 133; *Id.* 162; *Hem Chundra, Raj Kumar v. Musst. Assa*, 3 W. R., 170; *Nyamutullah v. Gobinda Chundra*, 4 W. R., Act X, 25; *Dhun Sing v. Chundra Kant*, *Id.*, 43; *Kuzee Khoda Newaz v. Nobo Kishore*, 5 W. R., Act X, 53; *Goordas v. Sheik Durbari*, *Id.*, 86; *Sham Lal v. Madun Gopal*, 6 W. R., Act X, 37; *Poolin Behari v. Nemye Chand*, 7 W. R., 472; *Rakhal Dass v. Kinooram*, 7 W. R., 242; *Soodistee Lal v. Mutee Lal*, 8 W. R., 487; *Huruk Sing v. Toolsiram*, 11 W. R., 84; *Raja Nilmoni v. Ananto Ram*, 19 W. R., 393.) In some earlier decisions a somewhat different opinion was entertained. Thus it has been held that it is only when a raiyat claims to hold from the Permanent Settlement that the presumption arising from twenty years' payment of uniform rent can avail him—(*Sheik Ekram v. Bibi Bahooran*, 2 W.

R., Act X, 68). A plea of holding at the same rent for forty or fifty years is not sufficient to raise the presumption—(*Ghose Sing v. Ottur Sing*, 4 W. R., Act X, 15), and the admission by a raiyat that his tenure was acquired by his father thirty or thirty-five years ago, rebuts it—(*Mugni Moyi v. Huro Chunder*, 6 W. R., Act X, 27). A landlord's admission that the raiyat has held a tenure for thirty or thirty-two years at the same rent does not amount to an admission that the land has been held at that rate of rent from the Permanent Settlement, but on the contrary it states that tenure commenced at a much later period—(*Peary Mohan v. Radha Madhab*, 10 W. R., 427.) Where the defendant did not expressly plead that he had held at a fixed rate from the time of the Permanent Settlement, but stated that he had paid a uniform rent since 1829, the Court held that this answer in no way rebutted the presumption. "The defendant," observed Norman, J., "stated his title as well as he could, alleging payment of rent at a uniform rate from 1829, nearly forty years ago, as far no doubt, as his recollection can go, and says in effect: 'I claim the presumption that the rate was fixed from an earlier period,' that is to say from a time prior to the Permanent Settlement"—(*Poolin Behari v. Nemye Chand*, 7 W. R., 472). It must be observed in this case that the defendant did not plead that his tenancy commenced in 1829, but merely produced proof to show that he had paid a uniform rent since 1829; and the Court inferred from the particular facts of the case that he meant to plead that his tenancy started from the time of the Permanent Settlement. Thus when a raiyat pleads that he and his family had held certain lands from generation to generation, and claims the benefit of the twenty years' presumption, he will be supposed to have dated his claim from the time of the Permanent Settlement. Thus when a raiyat pleads that he and his family had held certain lands from generation to generation and claims the benefit of the twenty years' presumption he will be supposed to have dated his claim from the time of the Permanent Settlement; but where a tenant fixes some particular date, as the one from which his tenancy commenced, no matter how remote that may be, if subsequent to the Permanent Settlement, he cannot claim the benefit of the presumption arising under this section—(*Miturjeet Sing v. Toondun Sing*, 3 B. L. R., App., 88; 12 W. R., 14; *Kanda Misser v. Gunesh Sing*, 15 W. R., 193); so where in a suit for enhancement a raiyat or talukdar pleads the section and claims the benefit of the presumption of the section, it is tantamount to his having named the Permanent Settlement—(*Dhun Sing v. Chundra Kant*, 4 W. R., Act X, 43). A raiyat is not precluded from the benefit of the presumption under this section, merely by reason of his stating that he holds under a potta not inconsistent with that presumption, though he may fail to prove the potta—(*Grish Chunder v. Kalee Krista*, 6 W. R., Act X, 57 F. B.; *Karoonamayi v. Sib Chunder*, *Id.*, 50; *Haronath v. Kamala Kanta*, 5 W. R., Act X, 56; *Peary Mohan v. Koylas Chunder*, 23 W. R., 58). If a raiyat sets up a *mokurari* potta as an answer to a landlord's claim to enhance his rent, and fails to prove the potta, or the potta produced by him is held to be forged, the landlord is not necessarily entitled to enhance the rent to the full amount claimed, but only to a fair and equitable rate having regard to the grounds of enhancement—(*Issur Chundra v. Nityanund*, 6 W. R., Act X, 70, F. B.) A forged document does not prevent a party to a suit from claiming an adjudication on other evidence of such portion as his claim as is true—(*Rani Swarnamayi v. Maharaja Suteesh Chunder*, 2 W. R., P. C., 13). The fact of a raiyat's having relied upon a *mokurari* tenure cannot prevent his falling back on the presumption arising under this section—(*Chamarni v. Ainulla Sirdar*, 9 W. R., 45).

This section makes no exception in favour of *khamar* land—(*Ram Coomar v. Raghoonath*, 1 W. R., 356). The presumption does not arise in a suit brought

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by a raiyat to have his jumma declared mokurari—(*Dukina Mohan v. Kareemalla*, 12 W. R., 243); so in the case of *Ishan Chunder v. Bhyrab Chunder*, 21 W. R., 25, Kemp, J., observed: "We think the Subordinate Judge was wrong in raising the presumption under section 4. The suit is a declaratory suit, and such a suit is not provided for either by Act X of 1859 or Act VIII of 1869 (B. C.). It is a declaratory suit brought by the raiyat in the Civil Court to establish his title. The plaintiff therefore must prove his case by a written contract such as a potta or by satisfactory evidence, that his tenure was in existence at the time of the Permanent Settlement, and that he has paid a uniform rate of rent ever since."

In rebutting the presumption arising from a twenty years' holding, the landlord must show either that the rent has been changed, or that the rent was fixed subsequent to the Permanent Settlement. A break or interruption in the holding would be sufficient to rebut the presumption, but if a raiyat holding

A break in the holding rebuts the presumption.

at a particular rent was

But not if the tenant has been unlawfully ejected.

unlawfully evicted, he would not necessarily cease to hold at that rate—(*Lateefunnessa Bibi v. Poolin Bihari*, W. R. Sp., 91). Nor is a tenant's protection swept away by a revenue sale—(*Saduk Sirdar v. Sremati Mahamoyi*, 5 W. R., Act X, 16; 1 Ind. Jur., 77). The break of one year in twenty is not sufficient to set aside the presumption that the receipts for nineteen years prove about the payment of uniform rent—3 W. R., Act X, 123. In a suit relating to four jummas in the possession of the same persons, in which it was proved that three of the jummas had been held at the same rate for twenty years, but that the 4th having been purchased only eighteen years previously by the said person, had not been longer in their own possession, it was held that the presumption might arise that the jumma itself had been held at an unchanged rent for twenty years, and that the lower Courts were justified in inferring that such had been the case—(*Radha Moyi v. Aghoro Nath*, 25 W. R., 384). "We think," observed Jackson, J., in this case, "that although the dakhilas in respect of that jumma went back to eighteen years, being the whole time that has passed since the jumma was purchased by the defendants, the Court was at liberty to infer that it had continued to be held at an unchanged rent for twenty years."

It must be remembered that it is only tenants who can claim the benefit of the presumption under this section. Thus where several joint owners by arrangement among themselves permit one of their number to hold a portion of the joint property,

The presumption only applies to raiyats and tenants.

paying a sum to others, this arrangement does not convert the occupier into a raiyat holding land at a particular rate of rent. It is a temporary arrangement among the joint owners of a particular time and cannot, either with or without a further holding, such as is here shown, be a basis for the presumption mentioned in this section—(*Raghoobun v. Bishen Dutt*, 2 W. R., Act X, 92). It seems, however, that when one co-sharer holds land in excess of his share at an agreed rent, he can be sued for such rent by the others—(*Kaloo Pershad v. Shah Lutafut*, 12 W. R., 418; and the same opinion is held in *Alladini Dasi v. Sreenath Chunder*, 20 W. R., 258); and this section will also apply to lands which had been held under an invalid lakheraj grant, and had been resumed subsequent to the Permanent Settlement—(*Beni Madhub v. Bhagbut Pal*, 20 W. R., 466). When, however, a raiyat sets up an adverse proprietary title to his landlord, which he fails to establish, he is not entitled to the benefit of the presumption. In the case of *Panday Bishonath* the defendant pleaded that he was a jaghir-dar, but being unable to prove his jaghir title, he was not allowed to fall back upon any right which he might have acquired from any lengthened occupation of

the land. "A party," the Court observed, "may have subordinate rights awarded when they arise out of the principle right which he pleads. But when a party pleads distinctly a jaghirdar's proprietary right against a malik's proprietary right, a Court cannot award a subordinate right of occupancy, which in no way arises out of a jaghirdar's proprietary right, but out of a regular right never pleaded by defendant, and in fact, incompatible with defendants' case"—(*Panday Bishonath v. Bhagvut Sing*, 7 W. R., 145). In other words where a defendant has held as a trespasser, and not as a raiyat, he cannot claim the benefit of the presumption which the law makes in favour of tenants.

The presumption will apply to tenants of khas mehal. The resumption by Government of a parent estate does not nullify the existing rights of a howladar within that estate, or deprive him of the presumption arising under this section—(*Mathura Nath v. Shesta Moni*, 9 W. R., 354). The definition of 'proprietor' now includes Government, and the tenant of a khas mehal is therefore in the same position as that of an ordinary proprietor.

50. (3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

This sub-section explains the effect of consolidation of several jummas into one, and of subdivision of one juma into many. Where a number of jummas which have been held at fixed rates are consolidated into one holding, the fixity of rent is not affected by the consolidation—(*Kazee Khoda Newaz v. Nubo Kishen*, 5 W. R., Act X, 53; *Sukhomoni v. Gungagobinda*, Sp. W. R., Act X, 52). "This principle applies equally to jummas which have been derived in part or in whole with the consent of the landlord, and which are subsequently consolidated into one juma. The presumptions of section 4 are not restricted to holdings, but refer simply to the fact that land has been held by a raiyat at a rent which has not been changed for a period of twenty years, before the commencement of the suit"—(*Rajkishore v. Hureeshur*, 10 W. R., 177; *Kashinath v. Bamasundari*, *Id.*, 429). In the same way the subdivision of a holding does not necessarily destroy the continuity of the tenure in respect to the rate of rent. The question in such cases is whether "the rate of rent paid for each bigha has remained unchanged for the period prescribed by law." If it has, that rate cannot be altered. The zemindar by consenting to a subdivision of, addition to, or subtraction from, the total holding of the raiyat, does not destroy the continuity of the tenure in respect of the rate of rent, and the rent paid for each bigha of land. It is undoubtedly true that the zemindar might refuse to consent to a subdivision of the tenure or to a contraction of the holding, and might say 'I will hold the whole tenure responsible for the whole rent,'—(*Hills v. Hurolal*, 3 W. R., Act X, 135). Similarly the division of a raiyat's tenure among his heirs does not destroy the continuity of the holding, and as long as the entire rent is paid by their joint contributions, the old holding will be preserved; but the entire holding will be vitiated if one of the joint tenants makes default—(*Hills v. Bisharuth*, 1 W. R., 10.) When a tenant holding land which had paid a uniform rate, since the Permanent Settlement relinquished a portion of his holding, and received a fresh potta from his landlord, in which a deduction was made for the relinquished

land, it was held that the fixity of rent for the remaining portion was not affected by the arrangement. The potta was merely the confirmation of the tenancy already existing—(*Kenaram v. Ramkumar*, 2 W. R., Act X, 17). The sale of a portion of a tenure involving a distribution of rent over two parts does not amount to a change of rent within the meaning of this section—(*Soodha Mukhi v. Ramgati*, 20 W. R., 419).

50. (4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

The probable meaning of this clause is that at the time when the enhancement is sought, if the tenure is a terminable tenure, the presumption will not arise.

Terminable tenures.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Presumption as to amount of rent and conditions of holding.

The old Act:—Section 5 of Act X of 1859 and Act VIII of 1869 (B.C.) had: "In case of dispute, the rate previously paid by the raiyat shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act." The law presumes that the rent at present paid is fair and equitable—(*Issur Ghose v. Hills*, Sp. W. R., 148; *Thakurani Dasee v. Bissesser Mukerji*, B. L. R., 1 Sup. Vol., 202; 3 W. R., Act X, 110.)

This section adopts the case-law on the subject of presumption.—(*Uma v. Nitai Chand*, 14 W. R., 467; *Jumunt Ali v. Chowdry*, 16 W. R., 185; *Enyetullah v. Sheikh Elahi Buksh*, W. R., Sp. Act X, 42); *Tara Churn v. Amir Mundle*, 22 W. R., 394).

Agricultural year:—See section 3 (11) p. 43 *ante*.

Until the Contrary is Shewn.—The existence of a decree for enhanced rent, even if the landlord accepted the old rent for some years after the passing of the decree—(*Lander v. Binode Lal*, 6 W. R., Act X, 37.)

A decree for enhancement having been obtained the zeminder agreed that the tenant should be allowed to hold a lease at a less rent for a certain number of years on certain conditions. After the expiration of the period fixed by the lease, he sued to recover rent at the rate declared payable by the enhancement decree. Held, that the effect of the argument was to suspend the decree, and in the absence of a provision in the lease for revival of the decree on the expiration of the term limited, the plaintiff must have recourse to the procedure laid down by the enhancement provisions of Act VIII B.C. of 1869, if he seek to recover a higher rent than that paid under the lease—(*Nobin Chunder v. Gour Chunder*, I. L. R., 6 Cal., 759; 8 C. L. R., 161). So in *Burhannadi v. Mohan Chunder*, 8 C. L. R., 508, the defendant being, under a settlement originally obtained from the Government, bound to pay a particular rent to the plaintiff who had subsequently to that settlement obtained an ijara from the Government, the

plaintiff in 1879, sued to enhance that rent and obtained a decree upon which a compromise was made, the defendant agreeing to pay a higher rent for the years 1281 and 1282. The defendant having paid no rent for 1283 and 1284, the plaintiff sued for the arrears at the higher rent. *Held*, that no proper proceedings for enhancement having been taken, or fresh contract with the defendant entered into, the special arrangement came to an end at the expiration of 1282, and the original arrangement revived, and therefore the plaintiff was not entitled to demand more than the original rent payable.

Alteration of rent on alteration of area.

"This ground is in our opinion misnamed as a ground of *enhancement*. If the quantity of land held by a raiyat is found upon measurement to be greater than the quantity for which he has been paying rent, and if he is compelled to pay rent for the excess, the whole rent payable by him is increased; but the rate of rent payable is not increased, and the term "*enhancement*" might well be confined to this latter increase. The cases under this head may, broadly speaking, be divided into two classes: The first class includes cases of encroachment, where the raiyat has encroached upon the uncultivated or unoccupied land of his landlord and has surreptitiously enlarged his holding. These cases are of less frequent occurrence in the more settled parts of the country, where there is little or no waste, where the fields are tolerably well demarcated by *ails* or low boundaries, about a foot and half high, and every field has a well known owner. In less populous districts, where cultivation is in patches, and a considerable portion of land lies fallow or waste, the opportunity and temptation to encroachment are greater, and the *bond fide* cases of this class are consequently more numerous. Under the second clause come those cases in which there is little pretence for saying that any encroachment has really taken place, but a measurement, or threat of measurement, is used as a means of obtaining an increase of rent, which the landlord thinks he ought to have, and which he sees no other way of obtaining. There is a dispute about the proper length of the measuring pole, and the landlord having made the measurement with a pole of his own choosing, hopes to get this dispute settled in his favour, or he trusts to the various well known devices of the measuring Amin to make the land more than it really is. Even where the landlord is too honourable to resort to such practices, his *amla* makes rich gains out of measurement; and the raiyat who would refuse to satisfy their cupidity would find the area of his holding considerably enlarged in the measurement papers, while if we can pay sufficiently handsomely, he finds no difficulty in getting it untruly understated. Then it may be that rent has not usually been paid at so much per bigha, the practice being for a *jumma* or holding roughly described as containing so many bighas to be let at a lump sum; and the landlord taking this rough description as an accurate standard calculates the rate of rent, and being able to show that the holding contains more land than is shown by this rough description claims extra rent for the excess. The absence of written leases makes this too commonly possible. We have endeavoured to provide for some of these cases by *illustrations*. The best remedy for the perversion of this portion of the law will be by rendering the results sought to be achieved by such perversion more easily achievable in a legitimate manner and upon the grounds legitimately applicable."—(R. C. R. Vol. I.)

"We have, in section 52, providing for the alteration of rent of the ground of an alteration in the area of the holding, assimilated the provisions of the two clauses (a) and (b), which provide respectively for increase and reduction; and

we have inserted the following new sub-section to guide the Courts in cases where there may be a dispute as to the area for which the tenant has been paying rent:—

“In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

“(a) the origin and conditions of the tenancy; for instance, whether the rent was a consolidated rent for the entire holding;

“(b) where the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

“(c) the length of time during which the tenancy has lasted without dispute as to rent or area; and

“(d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

We have also brought the section under the general rule that the Court shall not fix a rent which would be unfair or inequitable.” (*S. C. III.*)

52. (1) Every tenant shall—

Alteration of rent in
respect of alteration in
area.

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure of holding was lost by diluvion or otherwise without any reduction of the rent being made, and

(b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

The old Act:—Clause (a), sub-section (1) has revived ground No. 3 of section 17 of Act X of 1859 and section 18 of Act VIII of 1869 (B.C.). That ground ran thus: “No raiyat having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely: * * * That the quantity of land held by the raiyat has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.”

And clause (b), sub-section (1) has restored partly section 19 of Act VIII of 1869 (B.C.) and section 18 of Act X of 1859: “Every raiyat having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, * * * or if the quantity of land held by the raiyat has been proved by

measurement to be less than the quantity for which rent has been previously paid by him."

Tenant :—The word 'tenant' includes tenure-holders, raiyats of three classes, and under-raiyats—See section 4. So that even a raiyat at a fixed rate is subject to this section, and his rent may be enhanced by re-measurement of his area for surplus land in possession. The principle upon which this section has been enacted is that an additional rent for excess land in possession of the tenant is no enhancement. Hence this provision has been removed from the enhancement section and enacted as a separate rule.

Notice :—No notice of enhancement is necessary under this Act. See section 30, pp. 153-54 *ante*. Under all the old law, no suit for enhancement on account of accretion would lie unless a proper notice of enhancement was previously given. —(Brojendra Kumar v. Upendra Narain, 1 L. R., 8 Cal., 706; Ramnidhi v. Parbati Dasi, 1 L. R., 5 Cal., 823; Huro Sundari v. Gopee Sundari, 10 C. L. R., 539; Shurosvati Dasi v. Parbati Dasi, 6 C. L. R., 362; 10 W. R. F. B., 33; Dwarkanath v. Baburam, 1 L. R., 9 Cal., 72).

Excess lands liable to assessment :—It has been held that when a raiyat holds in excess of the area leased to him, he is liable to enhancement—(Raj Mohan v. Issur Chunder, 8 W. R., Act X, 19; 3 W. R., 14; David v. Ramdhun, 6 W. R., Act X, 97; Shama Jha v. Doorga Roy, 7 W. R., 122; Golam Ali v. Baboo Gopal Lal Thakur, 9 W. R., 65; Gopeenath v. Ram Tukee, 9 W. R., 476). In other decisions, a raiyat who holds land in excess of the quantity included in his mukurari potta has been treated as a trespasser, and it has been held that he cannot be sued for enhancement in respect of it—(Roshun Bibi v. Bissonath, 6 W. R., Act X, 57); so the rent of a tenure protected from enhancement under the provisions of section 4, Act X of 1859, cannot be increased on the ground of excess land—(Decourcy v. Meghnath, 15 W. R., 157), per D. Mitter, J. In the case of Frankishen, v. Monomohini, 17 W. R., 33, Couch, C.J., observed: "We think that the judgment of the Privy Council which has been followed by the late Chief Justice (Sir Barnes Peacock) in the case reported in 6 Weekly Reporter Act X, p. 57, is to be reconciled with the provisions of section 17, Act X of 1859, clause (b), by considering that the clause is applicable to cases where the land was undoubtedly included in the original tenure, but upon a fresh measurement it has been found that there was some mistake in the former measurement, and that a greater amount of rent ought to be paid in respect not of any fresh land, but in respect of land which was included in the original tenure. * * * The Judicial Committee of the Privy Council say in *Rajah Sutta Suran v. Mohesh Chunder and Tarini Churn*, (12 Moore's Indian Appeals, p. 274; 11 W. R., P. C., p. 11) 'a suit for enhancement implies such a privy of title or tenure existing between the parties that a claim for some rent is legally inferable from it, and there is here proof that that relation is denied to have existed in respect of these two parcels of land. As to the latter portion, where the respondent's title is denied, and the claim of another zemindar set up, the proper remedy seems to be by a suit in the nature of an ejectment.' Here too it was denied that in respect of this land, the relation had existed. * * * Sir Barnes Peacock says, in the case in 6 Weekly Reporter Act X, p. 157, that "if the party has not been paying anything for the excess, he may be a trespasser as to the excess, but he is not a tenant liable to assessment. This case before Sir Barnes Peacock is more strictly applicable to the present case than the judgment

in the Privy Council."—See also *Binode Bihari v. Masseyk*, 15 W. R., 483. In other decisions it has been held that when a tenant holds excess lands for which no rent has hitherto been paid, the zeminder may treat him either as a trespasser or as a tenant—(*David v. Ramdlun*, 6 W. R. Act X, 97; *Rajmohun v. Gooro Churn*, 6 W. R., Act X, 106; *Sheik Ahmed Hossein v. Must. Bandoe*, 15 W. R., 91; *Binode Beharee v. Masseyk*, 15 W. R., 493). In the latest of the decisions on this point, *e. g.*, *Gooro Das v. Issur Chunder*, 22 W. R., 246, Mr. Justice Markby distinguished the cases reported in the 6th Weekly Reporter, p. 57, and 17th Weekly Reporter, p. 33, and observed: "We think the true presumption as to encroachments made by a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure, and form part thereof for the benefit of the tenant so long as the original holding continues, and afterwards for the benefit of his landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit. This is the clear rule of English law, and it is a rule which is supported by reason and principle. In India, where there is a great deal of waste land, and where quantities and boundaries are very often ill-defined, there are very strong reasons for the application of such a rule. And the principle upon which the rule is founded is one of general application, namely, that if an act is capable of being treated as either rightful or wrongful, it shall be treated as rightful. Now in the case put the act of the tenant in taking possession of more land than was let to him, though it possibly may have been a trespass and wrongful, may in most cases equally well have been done with the assent, express or implied, of the landlord, and so have been rightful, and in the absence of any proof to the contrary it is treated as the latter. We know of no case in which the principle has been expressly recognized by judicial decision in India, but it is in accordance with the principle laid down by section 4 of Regulation XI of 1825 as the increase of land by alluvion. In practice also encroachments made by the tenant are not considered as held by him absolutely for his own benefit against his landlord. If it were so, the tenant would in twelve years necessarily gain an absolute title under the statute of limitations; but we do not know of any case in which a title has been thus established." This decision has been followed in *Nudyar Chand v. Mian Jan*, J. L. R., 10 Cal., 820. The Judges remarked: "This case, therefore, directly raises the question, what the law of this country is with regard to encroachments made by a tenant upon his landlord's property. There is no doubt whatever, that by the English law an encroachment made by a tenant upon land adjoining to, or even in the neighbourhood of his holding, is presumed, in the absence of strong evidence to the contrary, to be made for the benefit of the landlord. And this rule applies to all land so encroached upon, whether the landlord has any interest in it or not. If a tenant during his tenancy encroaches upon the land of a third person and holds it with his own tenure until the expiration of the tenancy, he is considered to have made the encroachment, not for his own benefit but for that of his landlord; and if he has acquired a title against a third person by an adverse possession he has acquired it for his landlord and not for himself. This doctrine appears to have been adopted here in the case of *Guru Das Roy v. Iswar Chandra Bose*, as well as in other cases). It is true that by the English law if it could be distinctly proved that the tenant made the encroachment adversely to his landlord, an adverse possession for 12 years might then give the tenant a title by limitation; and probably that would be so in this country. But that was clearly not the case in this instance, because the plaintiff himself in his plaint claims the land in question as part of his taluk (under defendant No. 2) * * * *. It would indeed seem

strange if, as a matter of law, a tenant were allowed, *without his landlord's permission*, to appropriate any land which adjoins his own tenure, and then, when this landlord complained of the trespass and required him to give the land up, he were allowed to take advantage of his own wrong, and insist upon retaining possession of it, until the expiration of his tenure. In this particular case, however, it was no part of the plaintiff's case that the zemindar, either expressly or impliedly, had consented to the encroachment. His case, in the first instance, was that the land in question formed part of his original taluk. That has been negatived by both the Courts. He then continued that he had held it adversely, to his landlord; but that, for the reasons already given, we have found to be untenable."

It very frequently happens that a lease which conveys a certain number of bighas with certain defined boundaries, contains in reality a greater quantity of land than is specified; and the question whether this excess land is liable to assessment furnishes a constant cause of litigation. It seems, however, to be tolerably settled by a number of recent decisions that, where the boundaries are given, the lease covers all the land included within those boundaries, whether in excess of the quantity specified or not. In such cases the lease is not to be construed as a lease of so many bighas and no more, but as a lease of certain lands, the number of bighas being added more by way of description than of limitation;—(see *Janaki Bulluv v. Nolinchandra*, 2 W. R., Act X, 33; 2 Board's Rep., 365; *Limond v. Gour Sundar*, *Ib.*, 121; *Ramnarain v. Trailok Chunder*, *Ib.*, 19; *Chandra Kanta v. Dhan Sing*, 1 Board's Rep., 174; *Modie Huddon v. Sandes*, 12 W. R., 439; *Herrick v. Sixby*, L. R., 1 P. C., 436, 452).

Where, however, a lease merely conveyed so many bighas of land without specification of boundaries, the tenant would, under ordinary circumstances, be bound to pay rent for any excess land he might hold—(*Bipradas De v. Musst, Sakermani Dasi*, W. R., Act X, 1864, 38; 2 Board's Rep., 57). But a tenant who had held land, though in excess of his lease, at an unvaried rent from the time of the Permanent Settlement, would be protected from enhancement. A certain ghatwal in Beerbhoom was stated, in certain *isunnavisi* papers prepared by the police in 1811, to hold a hundred bighas of ghatwali land; but upon measurement it was found that the land actually held was very much in excess of hundred bighas, and the zemindar sued to assess the excess. But the Court dismissed the case on the ground that the tenure had been held at a fixed rent from the time of the Permanent Settlement, observing that "if the payment of the quit-rent to the zemindar is considered as creating the relation of landlord and tenant, then the land has been held at a fixed rate of rent, which has not been changed from the time of the Permanent Settlement, and therefore either as a raiyat under section 3, or as a person possessing a permanent transferable interest intermediate between the proprietor of the estate and the raiyat under section 15, Act X of 1859, these defendants are entitled to continue to hold at the same rents, and the plaintiff as patnidar has no right to any fresh assessment"—(*Farquharson v. Dwarkanath*, 14 Moo. I. A., 259; 8 B. L. R., 504).

Where the tenant expressly stipulates to pay additional rent for excess land that may be found on measurement, no notice is necessary to enable the landlord to claim enhanced rent on account of such excess land—(*Dwarka Nath v. Baburam Luskur*, I. L. R., 9 Cal., 72; 11 C. L. R., 320; *Nistarini v. Bonomali*, 4 C. L. R., 278; I. L. R., 4 Cal., 941; *Laidley v. Bishen Churan*, I. L. R., 11 Cal., 553). In such a case there must be a

separate measurement for the express purpose of carrying out the stipulation—(*Rajah Luchman Pershad v. Lokhan Chundra*, 3 C. L. R., 74). In a previous suit the present plaintiff had sued the defendant for the amount of rent originally fixed in the lease, and the defendant claimed in that suit to have the rent reduced in accordance with the terms of the lease, and a measurement was thereupon made, which showed that the quantity of land held by the defendant was in excess of that named in the lease: that suit was decided in favour of the plaintiff for the rent claimed. *Held*, that the measurement adopted by the Court in the former suit was not, as regards the amount of the excess binding upon the defendants, and that even if it were, the fact of such measurement would be no sufficient notice of enhancement to the defendant—(*Kfram Mundle v. Hulodhur Pal*, 1 L. R., 3 Cal., 271). Defendant held 29 bighas and 83 bighas of land; the former admittedly as tenants to the plaintiffs, the latter they claimed to hold rent-free. Plaintiffs brought a suit for arrears of rent on the 29 bighas and the 83 bighas pursuant to a notice of enhancement, service of which they failed to prove, and the suit was dismissed on that ground. In special appeal plaintiffs contended that the suit was for assessment and not for enhancement, and that no notice was necessary. *Held* that having (as by the Rent Law they were entitled to do) treated the suit originally as one for enhancement, it was too late to shift ground in special appeal—(*Rash Bihari v. Khetra Nath*, 1 C. L. R., 418).

Where land accretes to an under-tenure, the right of occupancy in the land passes to the owner of the under-tenure, and not to the zemindar. The general law upon the subject is contained in clause 1, section 4, Regulation XI, 1825, which is as follows: "When land may be gained by gradual accretion, whether from the recess of a river or of the sea, it shall be considered as an increment to the tenure the person to whose land or estate it is thus annexed, whether such land be held immediately from Government by a zemindar, or as a subordinate tenure by any description of under-tenant whatever: provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed, to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed; and shall not in any case be understood to exempt the holder of it from the payment to Government of any assessment for the public revenue to which it may be liable under the provisions of Regulation II, 1819, or of any other Regulation in force. Nor, if annexed to a subordinate tenure held under a superior landholder, shall the under-tenant, whether a khudkasht raiyat holding a mourasi istemrari tenure at a fixed rate of rent per bigha, or any other description of under-tenant, liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be jointly liable." The accretion will then belong to the holder of the jote to whose tenure it has become attached—(*Juggut Chunder v. Panioty*, 6 W. R., Act X, 48; *Atlimoolla v. Sheik Saheboollah*, 15 W. R., 149). And the jotedar is entitled to hold the accretion on the same principle and under the same legal conditions as he holds the parent estate—(*Gobindamani v. Dina Bandhu*, 15 W. R., 87; *Golam Ali v. Kali Krishna*, 8 C. L. R., 517, *per Field, J.*). The words "justly liable" in section 4, cl. (1) of Regulation XI of 1825 indicate an intention on the part of the Legislature that the rent payable for an alluvial increment shall be settled with reference to the circumstances of each particular case, regard being had to the agreement between the parties in respect of the original tenure, where there is such an agreement, and where there is no such agreement, to any usage proved to be applicable to such tenure. When, therefore, a zemindar desires to

assess the accretion, he must show that he is entitled to do so either by law, custom or special agreement, and accreted lands, when liable to enhancement at the ordinary neighbouring rates, are entitled to a deduction of ten per cent. for collection charges and 10 per cent. for talukdari profits—(*Jaggut Chunder v. Panioty*, 6 W. R., Act X, 48; *Baboo Gopal Lal v. Kumar Ali*, 6 W. R., Act X, 85; *Jaggut Chunder v. Panioty*, 8 W. R., 427; (in review), 9 W. R., 379.) And even a tenant-at-will is entitled to occupy an accretion so long as he retains possession of his original holding—(*Bhagbut Prosad v. Durga Bijai*, 8 B. L. R., 73; 16 W. R., 95). It will be observed that clause 1, section 4, of the Regulation XI of 1825, refers only to under-tenants intermediate between the zemindar and the raiyat, and khudkasht or other raiyats who possess some permanent interest in the land, and not to tenant from year to year—(*Zaheeruddin v. Campbell*, 4 W. R., 57). The party to whose lands new formations gradually accrete is entitled to them, though he may not have lost any lands, and though the accretion may have been caused by the washing away of the lands of another person—(*Adoomesh v. Shiboo Sundari*, 2 W. R., 295). As long as any portion of the estate is in existence the zemindar is entitled to claim the land accreting to it as forming by law part of that estate—(*Bhoobun Mohan v. Watson & Co.*, Sp. W. R., 64). A zemindar cannot claim lands as an accretion to his estate, when such lands are capable of being identified as a re-formation of land belonging to another owner upon their original site—(*Lopez v. Madan Mahan*, 14 W. R. P. C., 11; *Hurshahai Sing v. Syud Lootfali*, 23 W. R., P. C., 8; *Ramnath v. Chundernarain*, 1 Hay, 284; *Musst. Imam Bandi v. Wajid Ali*, 7 W. R., P. C., 67; *Nagendrachunder v. Mahomed Esoff*, 18 W. R., P. C., 113; *Budanchunder v. Bipin Behari*, 23 W. R., 110.)

Where land has been added to the jote of a tenant by gradual accretion, the landlord is entitled to an increased rent on account of such accretions, on the conditions laid down in Regulation XI of 1825, section 4, clause 1—(*Shorahutti Dassee v. Parbutty Dassee* 6 C. L. R., 362; see also *Gopi Mohun v. Hill*, 5 C. L. R., 33.) A suit for enhanced rent will lie for increase of the area of a jote after accretion—(*Hara Sundari v. Gopi Sundari*, 10 C. L. R., 559; *Brojendra Kumar v. Upendra Narain*, I. L. R., 8 Cal., 706; *Ram Nidi v. Parbati Dasi*, I. L. R., 5 Cal., 823). Where the plaintiff held a jote under the defendants and their co-sharers, and a partition of the estate was effected in 1877, and to the defendant was allotted only 15 cottahs out of the plaintiff's jote the defendants notwithstanding recovered by decree in May 1881 rent for a larger quantity than what the plaintiff held under him; and the plaintiff therefore sued for reduction or rather for apportionment of the rent due to the defendant in September 1881; held that the suit was not barred by reason of its having been brought beyond a year from the date of partition, and that the proper period for bringing such a suit was six years—(*Durga Prosad v. Ghosita Gorla*, I. L. R., 11 Cal., 284).

Unless it is proved, &c.—If there has been a diluvion, and the tenant is paying on for the portion washed away, the re-formation of that portion will not make him subject to enhancement. If, however, after the diluvion, he has obtained a reduction of the rent, a re-formation will again subject him to enhancement.—(*Compare Hem Nath Dutt v. Ashgur Sirdar*, I. L. R., 4 Cal., 894).

Burden of proof.—In connection with this subject, see pp. 155-160.

Reduction of rent.—This section should be read with section 178 (f). A raiyat whose land has diluviated has three courses open to him. He may either sue under this section for reduction of rent, or he may wait until sued by

his landlord, and plead that he is entitled to a certain reduction on account of the diluviated land—(*Afsurooddeen v. Musst. Shorashi Bala, Marsh.*, 558); or he may complain of an excessive demand of rent, and sue for a refund of the sum which has been exacted from him. When a raiyat had been compelled to pay an excess rent for 1265 of Rs. 99, for 1266 of Rs. 199, for 1267 of Rs. 195, for 1268 of Rs. 1,126, in all Rs. 1,617, and sued the zemindar to recover the excess, it was held that the suit was not barred by limitation under section 30, Act X of 1859. "No doubt," observed the Court, "when a diluvion took place, the plaintiff had a right of suit to obtain an abatement of his jumma if the zemindar had refused to grant such abatement. But he was not bound to sue for that purpose. He was not actually injured until compelled to pay the rent named in the potta, without the allowance of the abatement he claimed. Upon that payment having been extorted from him, he had a new right of action; and as the suit would appear to have been brought within one year from that date, we think it was in time"—(*Barry v. Abdool Ali, Sp. W. R.*, 64; 2 Board's Rep. 85; *Raja Nilmoni Sing v. Annoda Prosad, 1 B. L. R., F. B.*, 97; 10 W. R., F. B., 41).

In *Afsurooddeen v. Musst. Shorashi Bala, Marsh.*, 558, a talukdar claimed an abatement of rent on the ground that a portion of his taluk had been washed away by a river; and the question arose whether he was entitled to claim a diminution of rent on this account. The Court held that he was so entitled, unless there was an express stipulation that he should pay, whether the land was washed away or not. "If a man," observed the Chief Justice, "stipulates to pay rent, it is clear he engages to pay it as a compensation for the use of the land rented, and independently of section 18, Act X of 1859. We are of opinion that, according to the ordinary rules of law if a talukdar agrees to pay a certain amount of rent, the tenant is exempt from the payment of the whole rent if the whole of the land be washed away. According to English law a tenant is entitled to abatement in proportion to the quantity of land washed away, and he is entitled to that abatement in suit brought by the landlord for arrears of rent." This question was further discussed in a subsequent case, in which the tenant claimed an abatement upon the ground that part of his land has been washed away, and that a part of it had been covered with sand. "We think," observed the Chief Justice, "upon principles of natural justice and equity, that, if a landlord lets his land at a certain rent, to be paid during the period of occupation, and the land is, by the act of God, put in such a state that the tenant cannot enjoy, the tenant is entitled to an abatement. The first question then is, whether there was any stipulation in the kabuliyat, which precluded the tenant from claiming an abatement, if, by act of God, any portion of his land was washed away? If it is found that, according to an express stipulation in the kabuliyat the tenant is not entitled to any abatement by reason of any part of the land being washed away by the act of God, then the tenant is not entitled to abatement during the term of that lease. But it is said the lease is at an end; but we think then, when a tenant holds on after the expiration of the lease, he does so on the terms of the lease, at the same rent, and on the same stipulation as are mentioned in the lease, until the parties come to a fresh settlement"—(*Sheik Enayet Ulla v. Sheik Elahee Buksh, Sp. W. R. Act X*, 42; 2 Board's Rep., 62. *Quære*.—*Ram Churn v. Lucas, 16 W. R.*, 279). Under section 178 (3) even a contract will not take away the right of the raiyat for reduction of rent.

Where a raiyat instead of suing for abatement waits until an action for arrears of rent has been brought against him by his landlord, and then claims a reduction on the ground of diluvion, the whole onus lies upon him of proving

the extent of the deduction to which he is entitled, and of showing precisely what lands have disappeared. The zemindar in proving that full rent has always been paid has proved a sufficient *prima facie* case, which it is for the tenant to rebut—(Savi v. Obhoy Nath, 2 W. R., Act X, 28). A tenant is, however, entitled, to abatement when the area of his holding has been reduced, not only by diluvion, but by other causes also. Thus when a portion of a raiyat's land has been taken up by Government for a road, it was held that he was entitled to a deduction of rent from the zemindar for the land taken from him—(Din Doyal v. Musst. Thakroo, 6 W. R. Act X, 24; Maharajah Dheraj Mahtab Chand v. Chitra Kumari, 16 W. R., 201). For remission on account of diluvion or washing away, see Krista Sundur v. Chunder Nath, 15 W. R., 230; or on account of land taken by Government for Railway purposes, see Moresh Chunder v. Gunga Moni, 2 Hay, 495; Gordon Stuart & Co. v. Maharajah Mahtab Chand, id., 565; Prosunno Mayi v. Sundar Kumari, 2 W. R., Act X, 30; Maharajah Mahtab Chand v. Chitra Kumari, 16 W. R., 201; or in respect of land taken by Government for the purposes of a road—(Deen Dyal v. Musst. Thakroo, 6 W. R., Act X, 24); or in respect of lands resumed as chakran by Government—(Huro Kishen v. Joy Kishen, 1 W. R., 299). In a suit for rent by a zemindar against a patnidar, the latter claimed abatement of the rent on the ground that part of the land included in the patni tenure had been acquired by the Government for public purposes. The kabuliyat executed by the patnidar contained a provision to the effect that, if any of the land settled should be taken up by Government for public purposes, the zemindar and patnidar should divide and take in equal shares the compensation money, and a further provision to the effect that the patnidar should make no objection on the score of diluvion or other cause to pay the rent fixed or reserved by this kabuliyat." Held that the patnidar was entitled to abatement of the rent—(Uma Sankur v. Tarini Chunder, 1 L. R., 9 Cal., 571.) In this case Field, J., in construing the clause in the stipulation, observed: "It appears to me that the taking of land by Government for a public purpose is not a cause of the same nature as diluvion, and for this reason: When land is washed away by action of the river, the thing itself out of which the rent issues is destroyed, certainly for a time, although it is quite possible that by action of the same river there may be a re-formation. But in the case of re-formation the custom of the country is that, where an abatement has been allowed for diluvion, enhancement is claimable for alluvion. When land is taken up by Government, the thing itself out of which the rent issues is not destroyed; it continues to exist, and the Government pays what must be taken to be the market value of the land at the particular time. It therefore appears to me that it is impossible to say that the taking of land by Government for public purposes is a cause *ejusdem generis* (of the same kind) with diluvion." Norris, J., remarked: "In construing this document it cannot reasonably be held that the taking of part of the land by the Government for the purposes of a railway is *ejusdem generis* with land abating or increasing by reason of diluvion and alluvion, or in other words, by the act of God; and I am strengthened in coming to this conclusion when it is manifest that there was present before the minds of the parties at the time the patni settlement was granted by the plaintiff, the fact that the Government was likely to take a portion of the land included in the settlement for the purposes of a railway; and if the parties intended that there should be no abatement of rent when Government exercises their powers, in addition to making an express provision for the distribution of the compensation money, they would have further stated that there would be no abatement of rent."

An ijaradar took on lease certain lands, giving a kabuliyat which contained

the following clause: "In regard to the aforesaid rent we take upon ourselves the risk of flood and drought, of death and flight, of alluvion and diluvion, of profit and loss. In no case shall we be able to claim a reduction in the rent, nor will it be open to you to demand more on account of alluvion, &c." During the lease, part of these lands were taken up by Government for the purpose of a railway, and compensation was paid to the lessor therefor. The ijaradar claimed to make a deduction from his rent for the land taken away from him. *Held*, that such a claim did not come under the meaning of the word "abatement" as used in the Rent Law, nor was it intended by the parties to be within the clause of the lease, but the land having been taken from the whole area demised, not by natural causes, but by *vis major*, the ijaradar was entitled to a deduction from the rent on his showing that there were tenants of his on the land, who, before the land was taken by Government, paid rent to him, which they had now ceased to pay—(*Watson and Co., v. Nistarini*, I. L. R., 10 Cal., 544). "We think," says Mr. Field in this case, "that is not properly a case of abatement, as the term is ordinarily used in the Rent Law. It is a case in which the tenant seeks to have a deduction in respect of land taken away from the whole area demised, not by natural causes, but by *vis major*. In this view we think that the ijaradar is entitled to a deduction." Portion of certain land held under a patni having been taken up by the Government for public purposes under the Land Acquisition Act, the zemindar declared his intention of granting no abatement of rent, and acting upon this declaration the patnidar was allowed to appropriate the whole of the compensation. The patni was subsequently sold under Reg. VIII of 1819, with notice of the amount of the original rent, and the purchaser now sued for abatement of that rent. He did not allege that he had no notice of the proceedings under the Land Acquisition Act—*Held*, that the plaintiff must be presumed to have had notice of these proceedings, and that it was therefore incumbent upon him to have made enquiry regarding the position of the patni, and that under the circumstances he was not entitled to the abatement sought for—(*Pearymohun v. Aftab Chand*, 10 C. L. R., 526).

If a reduction is claimed in a suit for arrears of rent and only partially allowed, the tenant may not bring a fresh suit for reduction, the issue being *res judicata*—(*Nobo Durgah v. Fyaz Buksh*, 204, W. R., 43). The plaintiff obtained a patni lease of certain villages from the defendant in 1861 at an annual rent, and in 1865 was evicted from a portion of the property. She took no steps to obtain an abatement; but inasmuch as she did not pay any rent for the year 1871, the defendant brought a suit against her for the rent of that year. The plaintiff set up the defence that she was entitled to an abatement of Rs. 155 from her rent; the Rs. 155 representing the annual value of the property which she had lost in consequence of the eviction. In that suit it was decided that the amount of abatement she was entitled to was Rs. 42. No appeal was made against that decision. In a suit brought by the plaintiff for the purpose of obtaining a permanent abatement of her rent, she claimed the precise measure of abatement, *viz.*, Rs. 155, which she had claimed in the rent brought against her by the defendant. *Held* that the question was *res judicata*, it having been raised and decided in the former suit—(*Nobo Doorga v. Fyaz Buksh*, I. L. R., 1 Cal., 202). In a suit for arrears of rent the landlord proved a jumabundi signed by the defendant admitting the area of the lands held and the rent payable to be as claimed by the plaintiff, and a decree was accordingly passed for the amount of arrears claimed, no further evidence being taken as to the extent of the land. Subsequently the tenant filed a suit against the landlord, alleging that he actually held a less area than that in respect of which he had been paying rent, and

claiming the right to have the land re-measured, and to pay rent in accordance with such re-measurement. The question was, whether the latter suit was barred by *res judicata* by the decision in the former suit? Pontifex, J., observed: "If a measurement had been ordered in the former suit, and if upon such measurement it had been found that the present plaintiff held the quantity of land which he was alleged to have held in the former suit, that would have been a *res judicata* unless the plaintiff proved subsequent relinquishment of part of the land. Speaking for myself I think it doubtful whether, in the former suit, which was for arrears of rent, the present plaintiff as defendant was entitled to insist that a measurement of land should be had. He, it seems to me, was bound to pay for the past years the rent which he was accustomed to pay until he took proceedings to get the rent adjusted according to the actual quantity of land in his holding. But whether that is so or not, we think, according to the proper construction of section 13 of the new Procedure Code, that the former decree cannot be treated as *res judicata*. Admitting, for the sake of argument, that the measurement of the land had been a matter directly and substantially in issue in that suit under Explanation II, yet it cannot be said that such matter was heard and finally decided by the Judge in the former suit; and, not having been heard and finally decided in the decree in the former suit, would not affect this suit as *res judicata* under section 13." Field, J., said: "The provisions of section 19, Act VIII of 1869 B.C. are peculiarly applicable to a case in which rent is paid at so much per bigha, kani, or other unit of measurement where rent is computed and paid in this manner; the raiyat is entitled to have a measurement at any time; and if the result of such measurement shows that he holds less land than he has been paying rent for, he is entitled to an order for abatement which will have prospective effect"—(*Roghunath v. Jugut Bundhu*, 8 O. L. R., 393.)

Plaintiffs (patnidars) sued the defendants (durpatnidars) for arrears of rent. The defendants alleged that a part of the land had been taken by the Government twenty-four years previously, for the purposes of a railway, and they claimed an abatement on that ground: *Held* that the Limitation Act does not in terms prevent a defendant from setting up such a defence; but that the great delay in this case, combined with other circumstances, disentitled the defendants, to any relief in a Court of Equity—(*Ramnarain v. Poolin Bihari*, 2 O. L. R., 5.)

A plaintiff who has sued for and obtained a decree for an abatement of rent payable in respect of a patni held by him, may afterwards sue for a refund of the rent paid by him before instituting the suit for abatement, in excess of the amount justly payable, notwithstanding that he might, if he had chosen, have included this claim in his suit for abatement of rent—(*Okhoy Kumar v. Mahtap Chunder*, I. L. R., 5 Cal., 24.)

The words "proved by measurement" in clauses (a) and (b) seem to imply that increase or reduction of rent will take place irrespective of the causes by which the excess or diminution was caused. Hence the decisions which laid down, that the

dispossession by a stranger.
plea of the quantity of land being less or greater than that mentioned in the potta cannot avail the tenant or the zemindar if he had known the land itself—the subject of the lease, must be considered as superseded—(*Tripp v. Kalidas Mukerji*, Sp. W. R., Act X, 122.) If a raiyat is dispossessed of his land by a third party, or if he loses it by his own default and not that of his lessor, is he entitled to an abatement? The wordings of the present section seem to give an affirmative answer to this question. It has, however, been held under the old law that he is not entitled to abatement. The mere fact of his having been in pos-

session of less land than that mentioned in his potta will not entitle him to a reduction of rent—(*Sitanath Bose v. Shamchand Mitter*, 17 W. R., 418.) A suit by a tenant against his original lessors for a declaration that he is not liable to pay them the whole rent payable under his potta in consequence of a third person having, subsequent to the grant of such potta, by suit established a right to a share of the rent, is not a suit for abatement under Act VIII of 1869 (B.C.), and therefore not subject to the rule of limitation prescribed by section 27 of the Act. Where under such circumstances, the tenant is holding more land than is covered by his potta, it is not necessary that his landlord, if desirous of enhancing the rent, should be referred to a separate suit for that purpose. The suit of the tenant being for equitable relief, the claim of the landlords must be taken into consideration in determining what relief the plaintiff is entitled to obtain—(*Chaud Moni v. Lokenath*, 6 C. L. R., 494).

In another case, where a tenant, after obtaining a lease for a certain quantity of land, was evicted from a portion of it, owing to the defective title of his lessor, it was held that he was entitled to an abatement of rent. "When a landlord," observed the Court, "leases any portion of land without any further stipulation with regard to the title, he does thereby impliedly undertake that he has sufficient title to support the lease, and he guarantees the tenant quiet possession and enjoyment. This is the result of the law of England, and we believe that it has always been held to be the same here"—(*Brojo Nath v. Heera Lal*, 1 B. L. R., A. C., 87; 10 W. R., 120). When once it is determined that a tenant is entitled to an abatement of rent, in consequence of the subject of the demise having been diminished, the only thing that requires to be settled is, what was the portion of the original rent which was referable to the portion of the tenure which has disappeared. If there is nothing in the potta to show that the rent was apportioned in parcels to the different parts of the whole land, the only way to arrive at a conclusion as to how much of the whole rent is fairly attributable to this particular portion is to deal with it as a matter of proportion, *i. e.*, such a sum ought to be deducted from the whole rent as would bear to that whole rent the same proportion as the annual value of the portion of the land that has disappeared bears to the annual value of the land originally leased—*Id.*, 121. The right of a landlord to receive rent from a tenant depends upon his securing to the latter quiet possession of the property leased—(*Kristo Sunder v. Chuuder Nath*, 15 W. R., 230). If the tenant be evicted from land demised, or they be recovered by a title paramount, the lessee is discharged from the payment of the rent from the time of such eviction, and if he is evicted from part, the rent is to be diminished in proportion to the land from which he is evicted—(*Gopannund v. Lalla Gobind*, 12 W. R., 109).

A landlord claiming remission from Government on account of damage done to his estate by a cyclone is not on that account bound to allow a remission to his under-tenants unless he got the remission on the understanding or agreement that he was in his turn to grant remission to his under-tenants—(*Goluk Chunder v. Parbuti Churran*, 15 W. R., 168). Where the jumma of a resumed lakheraj estate had been reduced by Government on the condition that the rents of the raiyats should be reduced in the same proportion, it was held that the raiyats were entitled to the benefit of the stipulation made by Government on their behalf at the time when the jumma was reduced—(1 Ind. Jur., 7; *Sukhawattalluh v. Patlu Golder*; *contra*, *Oomanunda Roy v. Sree Kanta*, 21 W. R., 108). A patnidar can sue his zamindar for abatement of the patni rent on the ground that the assets of the patni fell short of the amount stated in the lease, although such a suit is not a

suit for abatement of rent within the meaning of Act X of 1859—(*Rajah Nilmony v. Unnoda Persad*, 10 W. R., F. B., 41; *Rajah Nilmony v. Sharoda Persad*, 18 W. R., 434). A suit for abatement of rent by a patnidar on the ground of fraud caused by the concealment from him of the existence of intermediate tenure created by the zemindar, is maintainable under the Rent Law, though not under section 19—(*Shokoor Ali v. Urnola Ahalya*, 8 W. R., 504). A claim for rent being a recurring cause of action, a tenant is entitled to set up against it for any particular year any right which he had to a deduction of abatement, notwithstanding that he has paid full rent for several previous years—(*Maharajah Mahtab Chand v. Chitra Kumari*, 16 W. R., 201; *Gour Kishore v. Bonomali*, 22 W. R., 117).

52 (2). In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

- (a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding ;

In *Pahalwan Sing v. Maharaja Maheswar Bakshi Sing Bahadur*, 9 B. L. R., 169, the Judicial Committee observed : “ The plaintiff is to recover it according to the boundaries given in the plaint. It is true, it goes on to specify the quantities, but it turns out that those quantities are not strictly accurate. Then the question is, which is he to recover, the quantities or according to the boundaries given in the plaint ? Their Lordships think that it must be interpreted as if it were a conveyance of land stating the boundaries, and then saying that it contains so many acres ; of course, the real conveyance would be of the land within the boundaries, and it would be a mere false description that there was some slight mistake in the quantities. Their Lordships think that that principle ought to be applied to the case, because they find it among the rules that prevail in the Courts in India.” So in another case where the land leased consisted of several old holdings, some of which had been abandoned by the former occupiers, and one of which had previously been in the occupation of the defendant and the description of the quantity in the kabulyat purported to be taken from other old measurement papers, and it was probable that the land itself, the subject of the lease, must have been known to the defendant, the Court remarked : “ under these circumstances, we think, it would be no defence to this suit for rent even if the defendant could succeed in establishing that the quantity of land is in fact not so great as the quantity mentioned in the kabulyat. The defendant, probably knowing the land for which he was in treaty, there is no reason to suppose that he was misled, or that he has not substantially that land, and he cannot now evade the payment of the rent contracted by availing himself of the error or misdescription (if it exists) of the actual quantity given in the kabulyat.”—(*Tripp v. Kali Das*, Sp., W. R., Act X, 122.)

- (b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord ;
- (c) the length of time during which the tenancy has lasted without dispute as to rent or area ; and

“Payment of the full rent, year by year, more than 30 years after the lands are said to have been washed away, would be strong evidence that no such claim was in the contemplation of the parties when the contract was originally made.”—(*Ram Churru v. Lucas*, 16 W. R., 279; see also *Ram Narain v. Poolin Behari*, 2 C. L. R., 5).

(d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

In this, the Legislature seems to have overruled the decision of *Baboo Mundul v. Sheeb Kumari*, 21 W. R., 404, where it was held that section 19 referred to an alteration of area owing to a portion of the land having gone away by diluvion or otherwise, and not to some difference in the length of the measuring pole in use at different periods.

52 (3). In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which under the circumstances of the case is unfair or inequitable.

It should be remarked that though in fixing the reduced rent considerations should be made of the surrounding rates, yet the low rates of the neighbourhood is no ground for making the reduction—(*Baboo Mundul v. Sheeb Kumari*, 21 W. R., 404).

Profits of the tenure-holder:—See section 7 and notes *ante*, pp. 68-77.

Similar rates of the vicinity:—The old law laid down that the additional rent should be at a rate in proportion to that paid for the parent tenancy.—(*Gopal Lal v. Kunar Ali*, 6 W. R. X. 85; *Nistarini Dasi v. Bonomali*, I. L. R., 4 Cal., 941; *Golam Ali v. Kali Krishna*, I. L. R., 7 Cal., 479; *Laidley v. Bisnu Charan*, I. L. R., 11 Cal., 553). But this rule is not meant to be inflexible (*Churamani v. Howrah Mills Company*, I. L. R., 11 Cal., 696).

52. (4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

“When once it is determined that a tenant is entitled to an abatement of rent, in consequence of the subject of the demise having been diminished, the only thing that requires to be settled is, what was the portion of the original rent, that was referable to the portion of the tenure which has disappeared. It might be, of course, that the original contract specified in terms how much rent was

reserved out of the *mahal* in question. In this instance, however, I understand that there is nothing in the pottah to show that the rent was apportioned in parcels to the different parts of the whole land held in patni. It seems to me, therefore, that the only way to arrive at a conclusion as to how much of the whole rent is fairly attributable to this particular portion, is to deal with it as a matter of proportion only; that is, such a sum ought to be deducted from the whole rent as would bear to that whole rent the same proportion as the annual value of the portion of the land which has disappeared bears to the annual value of the land originally leased."—(*Brojonath v. Hfralal*, 1 B. L. R., H. C., 87; 10 W. R., 120).

Payment of Rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Instalments of rent.

The effect of this section goes further than the Legislature anticipated, under clause (5) of section 3, *ante*. In sections 53 to 68, both inclusive, rent includes also money recoverable under any enactment for the time being in force as if it was rent. Hence public cesses are recoverable under this section in four equal instalments.

Subject to agreement.—This section applies where instalments are not fixed by special agreements; and section 178 of the Act does not interfere with such contract. In a suit on the part of the Rajah of Durbhunga for unpaid instalments of rent where the agreement under which the defendant held was that he should pay his Government revenue through the Rajah, it was held that the rule which prevailed in that part of the country amongst ordinary tenants of paying rent month by month was not applicable to defendant, and that the instalments of rent and interest thereon were to be calculated according to the Government rules for the payment of revenue—(*Gridharee Sing v. The Court of Wards*, 10 W. R., 368). In a suit for rent where the kabuliyat stipulated that payment should be made in monthly instalments, the mere fact of the landlord not having strictly enforced the terms of the kabuliyat before, cannot prevent him from doing so now—(*Peary Mohun v. Brojo Mohun*, 21 W. R., 36; 22 W. R., 428.)

Agricultural year:—Is defined in clause (11) of section 3 of the Act, p. 43.

Limitation to run:—Under the ordinary principles of contract and limitation, it would rather appear that limitation would run in suits for arrears of rent from each quarter in which instalments are payable. The claim for the rent of the first quarter of 1880 would be thus barred in the second quarter of 1883, because such instalment would be an arrear under clause (3) of section 54, and article 110 of schedule II of Act XV of 1877 provides that the period of limitation (three years) for arrears of rent will run from the time the arrears become due. But under schedule III, part 1, clause 2 (b) of this Act, limitation for arrears of rent will not run from each instalment, but from the last day of the year in which the arrears fell due.

Established usage:—Means the established usage in the pargunnah, not the established usage between the parties—(*Chytunno Chunder v. Kodarnath*, 14 W. R., 99.)

Money Rent:—This section provides for instalments of money rent only; produce rents are payable when the produce is gathered, or as agreed upon between the parties, or where there is no such agreement according to the customs of the country.

54. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.
Time and place for payment of rent.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village-office, or at such other convenient place as may be appointed in that behalf by the landlord :

Provided that the Local Government may from time to time make rules, either generally or for any specified local area, authorizing a tenant to pay his rent by postal money-order.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

Similar provisions of the Contract Act:—The following sections of the Contract Act (Act IX of 1872) might be read with advantage with this section :—

"46. Where, by contract a promisor is to perform his promise without application by the promisee and no time for performance is specified, the engagement must be performed within a reasonable time. *Explanation.*—The question ' what is a reasonable time ' is, in each particular case, a question of fact.

"47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

"48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business. *Explanation.*—The question ' what is a proper time and place,' is in each particular case a question of fact.

"49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

"50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions. *Illustrations:*—

"(a). B owes A Rs. 2,000. A desires B to pay the amount to A's account with C a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knew of the transfer, C fails. There has been a good payment by B.

"(b). A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from

him upon such settlement. This amounts to a payment by A and B respectively of the sums which they owed to each other.

"(c). A owes B Rs. 2,000. B accepts some of A's goods in reduction of the debt. The delivery of the goods operate as a part payment.

"(d). A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A."

Shall pay:—The illustrations to section 50 of the Contract Act cited above, indicate 4 different ways in which a debt may be paid. Another (5) common mode of payment is, when the creditor desires the debtor to pay the money to some third person, as by atonement or apportionment. A payment by a tenant under the landlord's directions to another or for a specified purpose, is tantamount to a payment to the landlord himself, and is a sufficient answer to the landlord's suit for rent—(*Musht. Joykoer v. Furlong*, Sp. W. R., Act X, 112; 3 R. J. P. J., 101; compare *Kristo Dhun v. Mahomed Nukee*, 10 W. R., 495); similarly a payment of Government revenue by the tenant must be treated as a payment on account of rent—(*Hills v. Wooma Moyee*, 15 W. R., 545). Where a tenant has paid rent to two proprietors jointly, payment to one is a sufficient defence in a suit by the other, unless he has had notice of separation—(3 R. J. P. J., 137.) A payment of rent to one of several joint proprietors is a payment to all—(2 W. R., Act X, 15; *Mookta Keshi v. Koylash Chunder*, 7 W. R., 493). An auction-purchaser, with a notice of a payment in advance, made by the tenant to the former proprietors of rent due for a period subsequent to the date of purchase, is bound by such payment—(*Rafi Lal v. Rao Joggendra Narain*, 18 W. R., 328). Another (6) mode of payment is, when the debtor agrees to give a promissory note or to accept a bill for the amount, and a 7th mode of payment is by money order as in proviso to clause (2) of this section. Illustration (a) is an instance of payment to an agent; but payment to an agent, who is, to the payer's knowledge, not authorized to receive it, is not equivalent to payment to the principal—(*Mackenzie, Lyall v. Shib Chunder*, 12 B. L. R., 360.) As to illustration (b), set off can, of course, be pleaded in an action for the debt without showing any consent on the part of the plaintiff. See Civil Procedure Code, section 3.

The proviso gives the local Government an exceptional power of allowing the tenant to pay through money order. If the landlord appoints that mode of payment, it will be valid.

Application by the promisee for performance, like offer of performance by the promisor, must be so made as to give reasonable convenience to the other party.

Before sunset, &c.:—According to English law, rent is not due till midnight of the day specified in the lease for payment, but where it is necessary to demand or tender rent in order to eject or prevent a forfeiture, such demand or tender must be before sunset.

The common law distinguishes between cases where the thing is to be done *anywhere*, and those where it is to be done at a *particular place*. In the former case a tender at a convenient time before midnight is sufficient; in the latter it must be before sunset, because it is the duty of the promisee to attend—(*Coke on Littleton*, 202a; *Startup v. MacDonald*, 6 *Manning and Granger's Reports*, C. P., 593). Under section 47 of the Contract Act, the tender must, under *any* circumstances, be during the usual business hours. This section, however, provides that the tender must be made before sunset, and read with section 47 of the contract, it would mean that

the tender must not only be before sunset, but also during the usual hours of business.

Village office :—“The place where the promise ought to be performed” is fixed by clause (2) to be the landlord’s village-office, or at such other convenient place as the landlord may appoint. The word “convenient” implies that it does not lie entirely within the power of the landlord to appoint arbitrarily any unreasonable place. Section 49 of the Contract Act has “a reasonable place.” The rule is thus stated in Coke’s Littleton, 210b : “If the condition of a bond or a feoffment be to deliver twenty quarters of wheat or twenty loads of timber or such like, the obligor or feoffer is not bound to carry the same about and seek the feoffee, but the obligor or feoffer before the day must go to the feoffee and know where he will appoint to receive it, and there it must be delivered.” This is qualified by section 49 of the Contract Act by the duty imposed on the promisee of appointing “a reasonable place.”

Arrear of rent :—Section 21 of Act VIII of 1869 (B.C.), and section 20 of Act X of 1859, ran as follows : “Any instalment of rent which is not paid on or before the day when the same is payable according to the potta or engagement, or if there be no written specification of the time of the payment, at or before the time when such instalment is payable according to established usage, shall be held to be an arrear of rent under this Act.

Under the old sections in *Woomeshchunder v. Soorjeekanta*, I. L. R., 5 Cal., 713, the Court held that the arrear of rent of any year cannot be due except on the first day of the year following. Mr. Justice Jackson observed : “The suit was for the rent of the year 1280. Now, I apprehend, that the tenant would not be liable in respect of the whole rent of the year 1280, if his occupation were disturbed at any time before the conclusion of that year. It could not be positively stated that his occupancy had so continued until the last day of the year had expired, and therefore I apprehend there would be no arrear due until the commencement of the first day of the following year.” This decision was, however, overruled by a Full Bench in the case of *Kasheekanta v. Rohinikant*, I. L. R., 6 Cal., 325, in which the learned Chief Justice (Sir R. Garth) remarked : “We do not quite understand the reasons upon which the case of *Woomeshchunder v. Soorjeekanta*, proceeded. It seems to have been considered by the learned Judges in that case, that an arrear of rent does not become due until the day after that on which by the terms of the holding the rent is payable. But this, we think, is a fallacy. The rent becomes due at the last moment of the time which is allowed to the tenant for payment. If it is not paid within that time, it becomes an arrear and continues an arrear until it is paid. The word ‘arrear’ in section 29 of the Rent Act (VIII of 1869 B. C.) means ‘rent in arrear’; and rent in arrear would undoubtedly become due on the last day of the year in which it is payable.”

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Declaration:—This obviously means that if the rent is accepted by the landlord after the tenant has declared the year to which the amount is to be credited, the payment will be credited accordingly. Suppose the landlord does not accept the amount so tendered, the tenant may deposit it under sections 61 to 64.

The following sections of the Contract Act should be read with this section:—

"59. Where a debtor owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly. *Illustrations:*—

"(a.) A owes B, among other debts, Rs. 1,000 upon a promissory note, which falls due on the 18th June. He owes B no other debt of that amount. On the 1st June A pays to B Rs. 1,000. The payment is to be applied to the discharge of the promissory note.

"(b.) A owes to B, among other debts, the sum of Rs. 567. B writes to A and demands payment of this sum. A sends to B Rs. 567. This payment is to be applied to the discharge of the debt of which B had demanded payment.

"60. Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

"61. Where neither party makes an appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately."

The word "declare" in this section must be construed as *declare expressly or impliedly*. The intention of the debtor may be indicated by the circumstances under which the payment is made, and the illustrations of section 59 of the Contract Act give two such instances. This right of the debtor cannot be affected by any refusal of the creditor to apply the payment according to the expressed will of the payer. If the creditor does not choose so to apply, he must refuse it and enforce his rights as the law allows him. Where a debtor owed two debts, one actually due, the other not yet due, but the latter was guaranteed by the debtor's father-in-law, and it was shown that discount was allowed by the creditor on a payment made, it was held that these facts sufficiently established the debtor's intention to appropriate the payment to the guaranteed debt—(*Marryatts v. White*, 2 Stark, 101). The mere fact, however, of one debt being guaranteed, and another not, raises no presumption that a payment is made in respect of the guaranteed debt—(*Plomer v. Long*, 1 Stark, 153). A general payment made by one who is indebted in his own right and also in another right, as executor, for instance, is taken to be made in discharge of the debt due in his own right—(*Goddard v. Cox*, 2 Str. 1194.) If there has been no express or implied declaration of the debtor's intention, the creditor has the right of appropriating payment. But when money, belonging to the debtor, comes into the creditor's hands without the debtor's knowledge, the debtor's right of apportionment remains until he has had an opportunity of exercising it—(*Waller v. Lacey*, 1 M. and G., 54). The payment can be appropriated only to a "lawful debt, actually due and payable," by the debtor. A payment could not, therefore, be appropriated to a debt not yet due, or which arose out of a contract illegal or otherwise void. When neither the creditor nor the debtor has exercised his right of appropriation, the payment is appropriated to

the earlier debt, that is to say, the first item on the debit side is to be discharged by the first item on the credit side. A payment made without specification of account may be applied to the payment of any debt between the parties—(Shumbho Chunder v. Baroda Sundari, 5 W. R., 45; R. J. P. J., 162). A general payment made in one year, without proof that it was in satisfaction of the rents of that year, may be applied in satisfaction of the arrears of the previous years—(Ahmutty v. Brodie, Sp. W. R., Act X, 15). A payment for rent should be credited to the oldest rents first and not to current rents, unless so specifically stated by the party making it—(Ranceo Surnomayi v. Singhooroo, Sp. W. R., Act X, 134). If a riyat shows payment of rent for 1265 and 1266, it is to be presumed that all previous claims have been satisfied. To entitle the landlord to carry to the credit of 1264 any of the payments made in 1266, he must show that at the close of 1264 there was an arrear due to him—(Ranceo Sharut Sundari v. Brodie, 1 W. R., 274). The payments in each year must be presumed to be for the current year till the contrary is shown; and the surplus payments must *prima facie* be presumed to be for past, and not for subsequent years—(Tara Monce Dasi v. Kali Churun Surma, Sp. W. R., Act X, 14). In a suit by a landlord against his tenant for arrears of rent due for a portion of the year 1283 (1876), the defendant pleaded payment and called as his witness the plaintiff's agent, who admitted the receipt of certain payments from the defendant's under-tenants during the time for which the arrears were demanded; but swore that they were payments made in respect of arrears due on account of previous years. The Lower Appellate Court reversing the decree of the Court of First Instance gave the defendant credit for the payments so admitted. It was held that the Lower Appellate Court was wrong; that the defendant having pleaded payment, was bound to prove that the admitted payments were in respect of that portion of the year 1283 for which arrears were claimed—(Bibi Syefun v. Rudder Sahay, I. L. R., 7 Cal., 582).

Receipts and Accounts.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain Tenant making payment to his landlord entitled to a receipt. forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may, from time to time, prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

The old Act :—Section 11 of Act VIII of 1869 (B.C.) and section 10, Act X of 1859, enacted :—

“And every under-tenant from whom a receipt is withheld for any sum of money paid by him as rent shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so exacted or paid. Receipts for rent shall specify the year or years on account of which the rent is acknowledged to have been paid, and any refusal to make such specification shall be held to be a withholding of a receipt.”

Tenant :—The term ‘tenant’ includes tenure-holders, raiyats and under-raiyats,—see section 3 (3) and section 4. It therefore includes putnidars; see, however, section 195 (c) *post*.

Signed by the landlord :—See the definition of the term ‘signed’ in sub-section 14 of section 3. ‘Signed’ includes ‘stamped’; ‘signed by the landlord’ does not necessarily imply signed by him personally. The receipt may be signed by the agent—See section 187, *post*. Section 188 of the Contract Act says: “An agent, having authority to do an act, has authority to do every lawful thing which is necessary in order to such act. An agent having an authority to carry on business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.” And section 226 says: “Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.” The form of the receipt given in Schedule II of the Act shows that the receipt may be signed by the landlord or his “authorized agent.” It also shows that payments and the dates on which they are made are all to be entered in the same receipt. Receipts signed by the landlord’s agent if shown to be authentic, are *prima facie* evidence of payment, but not conclusive evidence (*Ameer Buksh v. Yousufat*, 22 W. R., 489).

This section does not apply when the payment is made by a postal money order.

Stamps on receipts :—*Vide* the Stamp Act in the Appendix, Art. 52 of Schedule I, and Art. No. 15 of Schedule II. A chalan, bearing a mobalukbundi or total in figures, and some marks, not a signature, of the tehsildar, is not a receipt within the meaning of this section—(*Johuruddin v. Debi Persad*, 13 W. R., 22). When a receipt is tendered in evidence duly stamped, the Court is not bound nor is it at liberty to allow the parties to go into evidence to show at what time the document was stamped (*Srimati Noor Bibi v. Sheikh Ramzan*, 24 W. R., 198; *Kali Charan v. Nobo Kristo*, I. L. R. 9 Cal. 272).

Shall specify such of the several particulars as can be specified :—Ordinarily the zemindars find it difficult to specify the area of the holding in the receipt. Where this is due to *bond fide* inability, the presumption of sub-section 4 will not apply. For other particulars, see the notes to the form of the receipt in schedule II, *post*.

The presumption of sub-section 4 :—“The giving of a defective receipt,” observed the Hon’ble Sir Stuart Bayley in the Debate on the Bill, “was of itself to operate as a discharge in full up to the date of the receipt. The presumption now given is nothing if the zemindar can show that the receipt is not an acquittance in full, or that the particulars required have been *substantially* given; it will only be in the case of wilful omission that the presumption will arise.”

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

Tenant entitled to full discharge or statement of account at close of year.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such other form as may, from time to time, be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

Tenant's name is one of the particulars to be mentioned in the receipt. The custom of giving receipts by murfut and guzrat still continues.

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

The old Act :—See section 11 of Act VIII of 1869 (B.C.) and section 10 Act X of 1859, quoted under section 56.

Without reasonable cause:—The words “without reasonable cause” diminish to a great extent the stringency of these penal provisions. What would be a reasonable cause is a question of fact. The landlord would be liable for the act of his gomasta—(*Rashmani v. Ramjai*, 2 Hay, 516).

Penalty:—Any landlord who withholds a receipt is liable to pay to the tenant double the amount as damages. It will be observed that the law does not say that double the amount is to be recovered as a penalty, but that penalty is not to exceed double the amount. The Court must, therefore, fix the damages within the above limit, according to the circumstances of each case—(*Ras Moni v. Ramjai*, 1 Board’s Rep., 135). If, however, it is proved that the receipts have been withheld without a reasonable cause, the Court must award some damages. The Judge has no discretion as to the award of damages, his discretion is only limited as to the amount—(*Zumeerunnissa v. Phillippe*, 1 W. R., 290; *Brojo Nath v. Shumbhoo Chunder*, 18 W. R., 25; *Johuruddin v. Debi Persad*, 13 W. R., 391). In this last case Mr. Justice Bayley observed: “The main ground pressed in argument by the learned Council, Mr. Money, is that this is a case of *injuria sine damnis*, and thus a case in which nominal damages only should have been given. * * *. We are then referred to several English cases from Broom’s Commentaries, pages 84, 644; Smith’s Leading Cases, Vol. 2, page 256; and Broom’s Legal Maxims, page 402, to show that in case of *injuria sine damnis*, nominal damages ought to be awarded. In my opinion, however, the cases that have been cited are not applicable in any way to the present case. Section 10 Act X of 1859 is almost in words a re-enactment of section 63 Regulation VIII of 1793. That Regulation refers to the proclamation in the preamble of Regulation I of 1793 as the reasons for the enactment. The preamble in Regulation I of 1793, article 7, para. 8, enables the Government to legislate from time to time for the protection of raiyats in their relations with the zemindars and farmers of land. These we now find substantially the terms of section 63 of Regulation VIII of 1793.”

Shall be punished with a fine:—This necessarily does not take away the jurisdiction of the Civil Court. The words “punished with a fine” have been introduced for the expression “shall be subject to a penalty” which would have better conveyed the meaning. The word “punish” or “fine” is not necessarily associated with the Criminal Court. The first two sub-sections prescribe penalty for two distinct acts of negligence, and such penalty can be awarded by the Civil Court. The third sub-section is another act of negligence which are distinguishable from the first two, and if the Civil Court had jurisdiction in the former, I do not see why its jurisdiction should be taken away in the latter. If, with regard to the first two sub-sections, section 144 (1) will have application, with regard to the third sub-section, section 144 (2) will have application. Wherever in this Act any Court or officer other than the Civil Court has been given any jurisdiction, the Court or officer has been specially mentioned; and in the Supplemental (Chapter VII) of the Act, the Legislature sums up the provisions when the Criminal Court ought to have jurisdiction.

Any rent paid by the tenant:—Penalty is recoverable only in respect of money paid by the tenant to the landlord as rent, but not in respect of money paid to a landlord by an inferior tenant because such money would not be rent under its definition.—(*Bibi Syefun v. Rudra Sahai*, I. L. R., 7 Cal., 582).

59. (1) The Local Government shall cause to be prepared

Local Government to prepare forms of receipt and account.

and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

"It will be for the landlords to choose whether they will use these forms, but we believe they will be found convenient."—(*S. C. R.*).

The following correspondence was published for general information in the *Calcutta Gazette* of the 16th September 1885:—

"I have the honor to request that you will kindly inform me whether, under the next Rent Act, section 59, we are obliged to buy forms of receipts from the Local Government, or whether I can have what we need printed, in the Government form, in our own press. A very early answer will oblige, as the number of receipt forms we shall need is great, not less than 2,500 books containing 200 receipt forms each.—(Colonel R. C. Money, B. C. S., Manager, Raj Darbhanga.)"

"I am directed to acknowledge receipt of your letter No. 5800, dated the 28th August 1885, enquiring whether, under section 59 of the Bengal Tenancy Act, landlords are obliged to purchase forms of rent receipts from the Government. In reply, I am to say that section 59 of the Tenancy Act is intended merely to render standard forms of receipt readily procurable by landlords who have not the means of getting such receipts printed on a large scale for themselves. All that the Act requires is that every receipt for rent given by a landlord to a tenant shall contain substantially certain particulars, and provided that this condition is complied with, it is immaterial whether the receipt form is purchased from Government, printed at a private press, or written by hand. In order to remove all possible misapprehensions on the subject, your letter and this reply will be published in the *Calcutta Gazette* for general information."—(H. H. Risley, Offg. Secy. to the Government of Bengal.)

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

"Section 60 is new, and its object is to give an advantage to the landlord whose title is registered against a claimant who is not registered in the Collector's books."—(*Sir Stewart Bayley in the Debate.*)

This is copied from section 79 Act VII of 1876 (B.C.) with the words "authorized agent" added.

In *Ram Krishna Das v. Sheik Harain*, I. L. R., 9 Cal. 517, 12 Cal. 141, Garth, C. J., observed :—“ It is contended that, under the provisions of that section (sec. 78 of Act VII of 1876), the registered owner of a revenue-paying estate has a right to sue the tenants for rent, although he cannot prove a good title to the estate of which he is the registered owner. We think the section does not say or mean anything of the kind. It is true that the owner of the estate cannot sue for rent *unless he is registered*; but it by no means follows that one who is not the true owner can sue, because he is registered. Speaking for myself I heartily wish it were the law, that the registered owner, and the registered owner only, was entitled to sue the tenants for rent, and that not only as regards revenue-paying, but all other estates.”

Deposit of Rent.

The operation of sections 61 to 64 was kept in abeyance by Act XX of 1885 till February 1886. Till the 1st day of February 1886, the provisions of the old Act were in force so far as they related to deposits of rent.

61. (1) In any of the following cases, namely :—

Application to deposit
rent in Court.

- (a) When a tenant tenders money on account of rent and the landlord refuses to grant a receipt for it;
- (b) When a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;
- (c) When the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or
- (d) When the tenant entertains a *bond fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due.

The old Act :—Section 46 of Act VIII of 1869 (B. C.) and section 4 of Act VI of 1862 (B. C.) ran as follows :

“ If any under-tenant or raiyat shall, at the mál kutchery for the receipt of rents or other place where the rents of the land or other immoveable property held or cultivated by him are usually payable, tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender to the zemindar or other person in receipt of the rent of such land, and if the amount so tendered shall not be accepted and a receipt in full forthwith granted, it shall be lawful for the under-tenant or raiyat,

without any suit having been instituted against him, to deposit such amount in the Court having jurisdiction to entertain a suit for such rent to the credit of the zemindar or other person aforesaid, and such deposit shall, so far as the under-tenant or the raiyat, and all persons claiming through or under him are concerned, in all respects operate as, and have the full effect of a payment then made by the under-tenant or raiyat of the amount deposited to such zemindar or other person."

"Under the existing law there is only one case in which rent can be deposited, namely, when the tenant has tendered the rent to his landlord, and the landlord has refused to receive it.

Rent Commission.

We have retained this and have provided for two other cases: (1) when the rent is payable to co-partners who have not appointed, and on behalf of whom the District Judge has not appointed a common manager, and the tenant is unable to obtain their joint receipt; (2) when in consequence of a disputed succession or other cause, the tenant entertains a *bond fide* doubt as to who is entitled to the rent"—(R. C. R., p. 12).

Bill No. II contemplated a special officer to receive these rent deposits and the Select Committee reported: "Under the existing law

B. T. Bill No. II.

there is but one case in which a tenant can deposit his rent in a public office, so that the deposit may operate as a payment to his landlord, namely, when he is prepared to declare solemnly that he has tendered the rent to his landlord, and that the landlord has refused to receive it. It has been found that this declaration has become a mere form, and it is thought better to allow the tenant to deposit his rent whenever he has reason to believe that the landlord will not receive it and grant a receipt. It is also thought advisable that a tenant should be allowed to deposit his rent in two other cases, namely when it is payable to co-sharers jointly, and he is unable to obtain their joint receipt, and no person has been empowered to receive the rent on their behalf; and (2) when the tenant entertains a *bond fide* doubt as to who is entitled to receive the rent. This extension of the right to deposit rent necessitates our conferring on the officer empowered to receive deposits a certain discretion not allowed by the present law. He is accordingly given by section 104 a discretion to refuse the deposit, if he does not think the circumstances of the case warrant its being made, and he is further given by section 106 a discretion to pay away the deposit, if he thinks fit, to such one of several rival claimants as may seem to be entitled to it, but subject, of course, to the right of any person actually entitled to it to recover the amount from the person, to whom it is so paid. As regards this last point, however, it will be seen that the officer will have power to retain the deposit if he thinks fit, pending the decision of the Civil Court as to the person entitled to it; and this latter course is doubtless that which he would adopt in all cases in which there might be any reasonable doubt as to the person entitled." (S. C. R. II).

Bill No. III, however, restored the jurisdiction of the Civil Court to receive deposit of rent: "We have likewise modified in some

B. T. Bill No. III.

particulars the provisions relating to the deposit of rent, but need only mention the provision that the deposit shall be made in the Court having jurisdiction to entertain a suit for the rent, and the limitation of the second ground on which an application to deposit rent may be made to cases where the tenant has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the landlord will not be willing to receive the rent or grant a receipt."—(S. C. R. II).

Tenant:—In this chapter for the meaning of the word 'tenant' see clause (3) of section 3 and also section 4. Tenure-holders, riyats and under-riyats

are all tenants. This chapter is headed *General provision as to rent*, and therefore refers to all classes of tenants, unless expressly provided otherwise. The word "tenant" therefore includes a patnidar as well as an under-riyat; see, however, section 195 (e.) *post*. The word "under-tenant" in section 46 of Act VIII of 1869, B.C. was wide enough to include patni talukdars—(Thakoor Das v. Peary Mohan, 22 W. R., 431).

Tender :—A riyat's tender of payment to be valid must be made by the recognized tenant and at the proper place, and to a person authorized to receive the same—(Dulichand v. Meherchand Sahoo, 8 W. R., 138). Where a party wishes to make known to a zemindar that he has a right to a tenure, the rent of which the zemindar refuses to accept from him, it is not sufficient for him to put the money into Court in the name of the recorded zemindar along with his own name without stating what his claim is; he should give distinct notice to the zemindar of the interest which he claims—(Mrityunjai Sirkar v. Gopal chunder, 2 B. L. R., 131; 10 W. R., 466).

The deposit which is contemplated by this section is a deposit after the rents have become due, where a tenant deposited rent before it became due, he would not be entitled to the benefit of this section.—(Taramoni v. Jacob Inandur, 6 W. R., Act X, 99). A party under the old law was not entitled to benefit from a deposit, if it was paid in without a previous tender to, and refusal by, the opposite party—(Kristo Protibur v. Alladini Dasi, 15 W. R., 4). Clause (b) now extends the sphere of tender from the present to the past.

The tender must be at a proper place and to a person authorized to receive the rent (Isan Chunder Ray v. Khajeh Ahsanullah, 16 W. R. 79). See *ante* pp. 245-47.

In making the tender a mistake in the name of the taluk is an immaterial error, specially when there is no doubt that the talukar is aware of the tender being made—(Woomachurn Sett v. Huree Prosad Misser, 10 W. R., 101). In a suit for rent, where an intervenor who, on his own account, pleads a deposit in Court made under this section is made a defendant by the Court, the fact of his being a defendant does not give rise to any equity as between the plaintiff and the other defendants—(Greedharilall v. Chunder Persad, 21 W. R., 277).

Clause (d) :—Tenants to have been in the habit of depositing in Court the rent due to a landlord in his sole name, are not justified, without receiving notice or order to that effect, in making the deposit in the joint names of that landlord and another—(John Rudd Rainey v. Nubokumar Mukerji, 24 W. R., 133). The *bona fide* of the doubt ought to be enquired.

61 (2). The application shall contain a statement of the grounds on which it is made; shall state—

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered,

in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, who

he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule directs.

The old Act:—Section 47 of Act VIII of 1869 (B.C.) and section 5 of Act VI of 1862 (B.C.) provided: "Such deposit shall be received in such Court on the application of the under-tenant or raiyat or his agent, made in writing, and on the under-tenant, or raiyat or his agent, making a declaration in the form, or as nearly as circumstances will admit, in the form set forth in the schedule (A) hereunto annexed, and the Court shall give a receipt for the same under its seal. If the declaration shall contain an averment which the person making the declaration shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the offence of giving or fabricating false evidence."

Schedule (A) ran thus:

"I, A. B., of &c., do solemnly declare that I did personally (or by my agent C. D.) on the day of tender payment to E. F. at his Mâl Kutchery (or at), the place where the rent of the lands at held or cultivated by me under or from the said E. F., are usually payable, of the sum of Rupees as and for the whole amount due from me in respect of the rent of the said lands from the month of to the month of both inclusive. I further declare that the said E. F. refused to accept the said sum so tendered (or to give me a receipt in full forthwith for the same); and I do declare that, to the best of my belief, the sum of Rupees so tendered, and which I now desire to pay into-Court, is the full amount which I owe the said E. F., on account of the rent of the said lands from the month of to the month of both inclusive, and that I owe the said E. F. no further sum on account of the rent of the said lands."

Application how to be stamped.—This application must be on a Court-fee stamp of the value of 8 annas, if the deposit be of more than Rs. 15. (Sched. II, art. 1, cl. (b), para. 3 of Act VII of 1870.) Under section 35 of the Court Fees Act, the Governor-General in Council has declared that the proper fee to be paid upon the deposit, in any Court in the territories under the government of the Lieutenant-Governor of Bengal, of rent not exceeding the sum of fifteen Rupees shall be as follows:—

If the amount deposited does not exceed Rs. 2 8	...	1 anna
" exceeds Rs. 2 8 but not " 5 0	...	2 annas
" " " 5 0 " " 10 0	...	4 "
" " " 10 0 " " 15 0	...	6 "

(Notification of the Government of India, No. 1070 of 12th February, 1874. Section 2, sub-section (3), provides that documents referring to repealed Acts should be construed to refer to this Act.)

Accompanied by a fee as the Local Government directs.—The Local Government has directed the following fee:—

"Section 61 (2).—For deposits of rent.—For deposits of rent under section 61 (2), 4 annas for every such deposit of Rs. 25 or less, with an additional 4 annas for every Rs. 25 or part of Rs. 25 in excess: Provided that in no case shall the fee exceed the sum of Rs. 5."

Limitation in case of deposit.—See Art. 2 (b) of Schedule III and notes.

62. (1) If it appears to the Court to which an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

Receipt granted by Court for rent deposited to be a valid acquittance.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered ;

in case (c) of that section, by the co-sharers to whom the rent is due ; and

in case (d) of that section, by the person entitled to the rent.

If it appears to the Court, &c.—Apparently the Court will have to be satisfied of the grounds under which the deposit is made, by affidavit or otherwise. The declaration itself may be treated as an affidavit, and the Court's duty will have simply to see whether the petition discloses the grounds mentioned in section 61. Possibly the depositor ought to be personally examined.

In the Statement of Objects and Reasons Bill No. I, it was stated : " This extension of the right to deposit rent necessitates our conferring on the officer empowered to receive deposits, a certain discretion not allowed by the present law. He is accordingly given by section 104 (62), a discretion to refuse the deposit if he does not think the circumstances of the case warrant its being made."

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

Notification of receipt of deposit.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (a) and (b) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered ;

in case (c) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in some conspicuous place in the village in which the holding is situate ; and

in case (d) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

The old Act :—"Upon receiving the money so deposited, the Court shall issue a notice to the person to whose credit it has been deposited, in the form set forth in the schedule (B) hereto annexed; and such notice shall be served by the Court, without the payment of any fee, either upon the person to whom it is addressed, or upon his naib, gomastah or other agent, and in the absence of any such agent, it shall be served by sticking up a copy of the same in the said Court, and another copy upon the Mâl Kutchery for the receipt of rents, or other place where the rents are usually paid for the land in receipt of which the money has been deposited." (Section 47 of Act VIII of 1869 B. C., and section 5 of Act VI of 1862 B. C.)

Sub-section (1) :—The provision about affixing a notification in the Court-house is new.

Sub-section (2) :—The notice under this sub-section can issue only fifteen days after the notification in sub-section (1) is affixed in the Court-house.

In cases (a) and (b) of section 61 :—In these cases the old law gave three modes of service of notice: (1) personally, or (2) upon an agent or naib or gomasta, and (3) by sticking it up in the Court-house and the Mâl Kutchery. The present section seems to recognise only personal service. The word 'person' can of course cover a 'recognized agent' who would stand for the principal, (*vide* section 187 *post*), but a service by sticking the notice in the Mâl Kutchery will not be sufficient.

In case (c) of that section :—The only mode of service necessary is to stick up the notice in the village-office or Mâl Kutchery.

In case (d) of that section :—This also contemplates personal service or at best service on recognized agents. In a deposit under this clause the Court will have to take evidence or trace otherwise the persons who claim or are entitled to the deposit. The best course possibly would be to insist upon the depositor to name in his application the persons who may have rival claims, or the persons whom he *bonâ fide* believes entitled to the rent, and then to issue notice upon such persons.

Service of notice.—The Local Government has framed the following rule regarding the service of notice under sub-section (2) :—

"Section 63 (2).—In cases (a), (b) and (d) of section 61 herein referred to, the notice of the receipt of the deposit shall be served by forwarding the notice by post in a letter registered under Part III of the Indian Post Office Act, 1866, or, where the Court may deem it necessary, in the manner proscribed for the service of a summons on a defendant under the Code of Civil Procedure."

64. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is

made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application, and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

The old Act:—"If the person to whom such notice is issued, or his duly authorized agent, shall appear and apply that the money in deposit be paid to him, it shall be immediately made over to him." (Section 47 of Act VIII of 1869 B.O.).

Sub-section (1):—In cases (a) and (b) and (c) of section 61, the Court will have no difficulty to determine the persons to whom the payment is to be made. The amount deposited will as a matter of course go to the persons named by the depositor in his applications. In those cases the section does not contemplate that if a stranger not mentioned by the depositor applies for money, the Court can enquire into his right, and if satisfied pay him the amount.

In case (d) only, when there is a *bonâ fide* doubt as to who is entitled to the money, the Court will have to determine the person so entitled. The enquiry, however, will only be a summary one and not final, because sub-section (4) contemplates a regular suit against the decision upon this enquiry. The safer course in a case like (d) would therefore be to refer the parties to a regular suit in a Civil Court and withhold payment till its decision.

Sub-section (2):—A system of payment through money-order will require the *direction* and not merely *sanction* of the Local Government.

Sub-section (3):—This will cause some difficulty. The provision does not say that after the lapse of three years, the deposit will be considered as belonging to the depositor and not to the person in whose favour it is made, but it simply says that it may be paid back to the depositor upon his application, &c. After the lapse of three years, if both the landlord and the tenant claim the money, to whom is it to be paid? It is often a custom in some districts with the *zamin-dars*, for instance at Patna, to sleep over their deposits for more than three years, and to apply for the Accountant-General's sanction when they want to draw them. A deposit in Court or with the Government is not barred by the law of limitation (*vide articles 60, 62, 133, 145, of Schedule II of the Limitation Act*). The person in whose favour the deposit is made may claim it from the Court even after three years. Again, against whomsoever this amount is paid under sub-section (3), the other party will have a right of suit under sub-section (4).

In the absence of any order of a Civil Court to the contrary.—In all cases in which a tender is pleaded, the Court which decides the question should make an order as to whom the deposit is to be paid back.

Arrears of rent.

See the definition of "an arrear" in clause (3) of section 54 *ante* and the notes given thereunder.

Landlord and Tenant:—In order to succeed in a rent suit it must be shown that the relationship of landlord and tenant exists between the parties. We have shown in pp. 3—12 *ante* how that relation arises, and how it is determined. It is necessary to refer to some other incidents bearing on that relation.

In a suit for arrears of rent plaintiff must show that there was some contract. Receipt of rent proves to pay rent entered into by defendant. This may be that relation.

shown either by the evidence of some specific contract, or by evidence of previous payment from which a contract could be inferred—(*Luchmepoot Doss v. Sheik Enyet Ali*, 22 W. R., 346). In the course of the judgment in this case, Ainslie, J., observed that, "although there may not have been specific contract to pay rent, still the plaintiff would be entitled to a fair compensation for use and occupation of land; but this will hardly help the plaintiff, because there is absolutely no evidence as to what would be a fair compensation for the land, except the evidence of previous payment of rent, which has been rejected as not trustworthy. Although the Court need not be strict to tie the plaintiff down to the exact form of his plaint, yet when he seeks to introduce any change he must show that the view of matters which he now puts forward was one which has been really in the contemplation of the parties, so that they had an opportunity of bringing forward evidence on the point, and that the evidence on the record was really directed to the substantial cause set up." Compare *Lukheekanta Das v. Sumeruddin Luskur*, 21 W. R., 208, F. B. In another case it has been held by Phear, J., that the claim of the plaintiff to recover rent from the raiyat whom he sues must stand upon one or other of the two grounds, namely, either the raiyat by payment of rent on previous occasions or otherwise has admitted himself to be bound to pay rent to the plaintiff personally, or the plaintiff must show that he has come by purchase or some sufficient mode of transfer into the place of those persons who had previously the right to receive, and be paid the rent by the defendant raiyat." Further on the learned Judge says that a party who has been in possession by receiving from the occupant raiyat the entire rent payable in respect of the land, or by virtue of any acknowledgment from him that he was occupying the land as the said party's tenant at a definite rent, has a right to claim rent from the raiyat as his personal tenant apart from any title to the property on which he relies—(*Blyro Sing v. Rajah Leelanand Sing Bahadur*, 21 W. R., 153). A lessee may sue the under-tenants and recover rent from them without proof of his previous receipt of rent. He is entitled to a rent decree if he can show that his lessor was in possession by receipt of rent. For his possession is in the eye of law a mere continuation of that of his lessor. A purchaser of a zemindari is entitled to all the rents accruing due from the date of his purchase; and if the tenants or raiyats, after having had notice of his title, choose to continue to pay their rents to, or for the use of, the former proprietor, they do so at their peril, and cannot plead such payments in answer to a suit for rent by the new owner. The notice may be either actual or symbolical, which last is usually given in this country by placing a bamboo on the land—(*The Collector of Rajshahye v. Huro Sundari*, Sp. W. R., Act X, 6). A landlord who was registered as owner of the land in respect of which he claimed rent, sued the occupier for such rent but was only able to prove the fact that he was the registered owner, and was unable to show that the relation of landlord and tenant existed, so that he had a good title to the

estate of which he was the registered owner. It was held that the suit was rightly dismissed.—(*Ramkisto v. Sheik Hurain*, I. L. R., 9 Cal., 517).

But the relation will not exist between a raiyat and a zemindar until the

The landlord is bound to give and maintain peaceful possession.

former has obtained possession—(*Bharut Chunder v. Oseemuddin*, 6 W. R., Act X, 56). Delivery of possession being a condition necessary for the maintenance of an action of rent, it is necessary for the landlord to show that the tenant was able to receive possession—(*Hurish Chunder v. Mohini Mohan*, 9 W. R., 582; *Buller v. Lalit Jha*, 3 B. L. R., App. 119). In every agreement to have land, there is an implied contract that the lessors will give peaceful possession of the land leased to the lessee—(*Muncoo Dutt v. Campbell*, 11 W. R., 278). It is not necessary for the lessee to apply to the lessor to be put in possession—(*Muncoo Dutt v. Campbell* in review, 12 W. R., 149; *Radhanath v. Jai Sundur*, 2 C. L. R., 302). See, however, section 108 of the Transfer Property Act which runs thus:—"In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is, and the latter is not aware, and which the latter could not with ordinary care discover. (b) The lessor is bound on the lessee's request to put him in possession of the property. (c) The lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption. The benefit of such contract shall be annexed to and go with the lessee's interest in such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested. (n) If the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with the lessor's rights concerning such property he is bound to give, with reasonable diligence, notice thereof to the lessor." A landlord is further bound to maintain his tenant in possession, and he is not entitled to recover rent, if the tenant is interrupted or disturbed by him or by any person claiming through him, or paramount to him. Thus by granting a later lease he makes himself responsible for any loss that may be occasioned to the tenant in possession under a prior lease.—(*Gobinda Chand v. Mun Mohan*, 14 W. R., 43). So when he interferes with the possession of his tenant by inducing his under-tenants to pay rent to him, his interference amounts to dis-possession.—(*Hoymobuty v. Sri Krishna*, 14 W. R., 58); or if he takes possession by a suezwal (*Donzello v. Gridhari Sing*, 23 W. R., 121). Eviction by title paramount to that of the lessor is a good answer in a suit for arrears of rent. "According to the English Law, 'if the lands demised be evicted from the tenant, or recovered by a title paramount, the lessee is discharged from the payment of the rent from the time of such eviction,' and if he is evicted from part, the rent is to be diminished in proportion to the land evicted. It is laid down in Bacon's Abridgment, Tit. Rent (m) where a lessor enters forcibly into part of the land, there are variety of opinions whether the entire rent shall not be suspended during the continuance of such tortious entry, and it seems to be the better opinion and the settled law at this day, that the tenant is discharged from the payment of the whole rent till he be restored to the whole possession, that no man may be encouraged to injure or disturb the tenant in his possession, whom by the policy of the law he ought to protect and defend, and it has been held that when a lessee is evicted by title paramount to that of his lessor, an appor-

tionment of rent may take place in an action brought for the rent. It appears to me that the *onus* is in the lessor, or who claims to be entitled to an apportionment to show what is the fair rate of the lands out of which the tenant was not evicted.—(*Per* Peacock, C. J., *Gopanand v. Lalla Gobind Pershad* 12 W. R. 109; *Brajanath v. Hiralal*, 1 B. L. R., A. C. 87, 10 W. R., 120). But if the tenant is disturbed by the wrongful act of a stranger, the landlord's right to receive rent is not affected. The tenant may proceed against the trespasser under law—(*Gobind Chunder v. Krishna Kant*, 14 W. R., 273). The right to rent, however, ceases, if the tenant is dispossessed by a stranger who has a good title, the lessor having none. This principle is recognised in *Runglal v. Lalla Khdur Pershad*, 17 W. R., 386.

Tenant cannot deny landlord's title :—The principle is “once a tenant, always a tenant.” This has been enunciated and embodied in section 116 of the Indian Evidence Act which runs thus : No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property, and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

See Taylor, sections 88-9. But where A had executed a kabuliyyut to B, the zemindar, and B subsequently granted a putni lease to C, who owed A for rent upon the kabuliyyut executed in favour of A, A admitted the execution of the kabuliyyut but pleaded that B was only a benamidar for her husband; it was held that it was open to A to prove his plea.—(*Denzell v. Kedarnath*, 7 B. L. R. 720, 722 note; 20 W. R., 352). So a tenant who pays rent to a person and believing him to be the landlord's representative, is not estopped from showing the want of title in that person.—(*Banee Madhub v. Thakur Das*, B. L. R., F. B., 588 6 W. R., Act X, F. B., 71). The learned Chief Justice observed in this case: “But even if the widow had been in receipt of her husband's share of rent,—that is to say, if after her husband's death the tenant had paid rent to her—speaking for myself alone, I should have been of opinion that neither she nor her grantee would be entitled in this suit to recover the rent after the will of her husband was established and her title disproved. According to English Law, if a man takes land from another as his tenant, he is estopped from denying the title of that person. But if he takes land from one person and afterwards pays rent to another, believing that other to be the representative of the person from whom he took the land, he is not estopped, in a suit for rent subsequently becoming due, from proving that the person to whom he so paid rent was not the legal representative of the person from whom he took. For example, if a man pays rent to another, believing him to be the heir-at-law of his deceased landlord, and afterwards discovers that he is not the heir-at-law, or that the landlord left a will, the tenant in a suit for subsequent arrears of rent, would not be estopped from showing that he paid the former arrears under a mistake, and that the person to whom he so paid had no title. The admission of a man's representative character by payment of rent to him is not conclusive, although it may amount to *prima facie* evidence. It is like all *prima facie* evidence, liable to be rebutted and the tenant is not estopped from rebutting it, if he can.” So in *Ranee Tilleswari v. Rani Ashmed*, 24 W. R., 101, the Court remarked: “It has been said that the plaintiff has already recovered a decree for rent against the ancestor of the defendant for a previous year, and he is therefore estopped from denying the title of the plaintiff who has thus become his zemindar. This contention is not cor-

rect. If the tenant had been installed in possession by the plaintiff, i. e., if his tenancy had been created by her, no doubt if he would not have been competent to question the title of the alleged assignee of his admitted landlord, and I do not know of any principle of law which prevents him from doing so." So a receipt of rent in which the zemindar styled himself "Zemindar of 4 annas" but which showed that the raiyat did not pay the zemindar the full 4 annas' share of rent was held not to estop the raiyat from questioning the landlord's title—(25 W. R., 69.) Section 116 of the Evidence Act shows that though the tenant is not permitted, *during the continuance of his tenancy*, to deny that the landlord had at the beginning of his tenancy, he is at liberty to prove that such title has ceased to exist (*Burne and Co. v. Rashamayi*, 14 W. R., 85; *Gopanand v. Gobinda Prosad*, 12 W. R., 109), or that his landlord had no title *before the commencement of the tenancy* where the tenant was in possession before, and he gave a *kabuliyat* to a person claiming a derivative title from the last owner, he is not estopped from disputing the title of that person. The Court observed: "The words 'at the beginning of the tenancy' in that section can only apply to cases in which the tenants are put into possession of the tenancy by the person to whom they have attorned, and not to a case like the present, where the tenants have previously been in possession. Possession in this case was really from the raiyat defendant to the plaintiff, and not from the plaintiff to the defendant. Further it cannot be said that there was any such contract between the parties as would estop the defendant from denying the plaintiff's title inasmuch as no consideration was given. Had the plaintiff inducted the defendant into possession, the giving of possession would have been the consideration, but the defendant was in possession before, and all that he did was to give a *kabuliyat* to a person claiming derivative title from the last owner. This title the defendant now wishes to dispute, and we think that he is entitled to do so"—(*Lal Mahomed v. Kallanis*, 1. L. R., 11 Cal., 519). But if the new landlord does not claim through any derivative title from the former owner, but sues upon a *kabuliyat* executed by the tenant in possession, will this decision apply? I think it will, because the words 'at the beginning of the tenancy' means the beginning of the tenant's tenancy, and not the introduction of a new landlord." The admission in the *kabuliyat* will then operate as an admission but not as estoppel. In a suit to eject a tenant holding over after the expiration of the lease, it is not competent to the tenant to set up that his landlord, the plaintiff, holds under an invalid *lakheraj*, and that the zemindar, and not the plaintiff, is entitled to the land.—(2 Hay, 473; *Marshall*, 377).

Possession of tenant not adverse to his landlord.—Where the relationship of landlord and tenant has once been proved to exist, the principle of 'once a tenant, always a tenant' will apply, and the tenant will not be allowed to set up an adverse right. The mere non-payment of rent, though for many years, is not sufficient to show that the relationship has ceased, and a tenant who is sued for rent and contends that such relationship has ceased, is bound to prove that fact by some affirmative proof, and more specially is he so bound when he does not expressly deny that he still continues to hold the land in question in the suit—(*Rungalal v. Abdul Guffur*, 1. L. R., 4 Cal., 314; *Poreshnarain v. Kashi Chunder*, 1. L. R. 4 Cal., 661; *Grish Chunder v. Bhugwan Chunder*, 13 W. R., 191; *Trailokya v. Mohim Chunder*, 7 W. R., 410). So where A holds under B's tenant, his possession is not adverse to B, and if he continues to hold, the presumption is that he holds as before.—(*Bungeraj v. Mohant Meghlal*, 20 W. R., 398). But should A set up a title to any portion of the property and obtain a decree against B's alleged tenant, that would give B a cause of action against

A.—(*Ibid*). Similarly if the tenant openly sets up an adverse title and holds adversely, limitation runs.—(*Huronath v. Jogendra Chunder*, 6 W. R., 218.) In a suit for possession of land brought against a tenant who is really a trespasser, the defendant, by merely alleging tenancy in his written statement, does not preclude himself from pleading limitation.—(*Dinamayi v. Durga Prasad*, 21 W. R., F. B. 70 overruling 7 W. R., 395). But in a suit for possession, where the defendant admits tenancy and there is no finding to the contrary, the Court cannot regard his possession as adverse, and apply the law of limitation, even if the plaintiff has not had khas possession for twelve years.—(*Doolee Chand v. Sham Bihari*, 24 W. R., 113).

Forfeiture of rights by denial of landlord's title.—The doctrine of disclaimer has been discussed at pp. 10-12, 139-140.

A registered owner under Act VII of 1876 (B.C.).—The mere fact that a person is registered as owner under Act VII of 1876 (B.C.) does not entitle him to recover rent where his title is denied.—(*Ram Kristo Das (Mahalanavis) v. Sheik Harain (Mahmad Jan)*, I. L. R., 9 Cal., 517; 12 C. L. R., 141). "That section (section 78 of Act VII of 1876 (B.C.)) says," observed in this case the learned Chief Justice, "that no person shall be bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act. It is contended that under the provisions of that section, the registered owner of a revenue-paying estate has a right to sue the tenants for rent, although he has not entered into any contract with them, and although he cannot prove a good title to the estate of which he is the registered owner. We think that the section does not say or mean anything of the kind. It is true that the owner of the estate cannot sue for rent, *unless he is registered*; but it by no means follows that he who is not the true owner can sue because he is registered. The point is very clear and has been decided by this Court on several previous occasions. Speaking for myself I heartily wish it were the law that the registered owner, and the registered owner only, was entitled to sue the tenants for rent; and that, not only as regards revenue-paying, but all other estates. Unfortunately, however, that is not the law at present"—*Vide* however section 79 of Act VII of 1876 B.C. and section 60 of this Act.

Mortgagee.—A mortgagee who has foreclosed his mortgage is not entitled to recover rent from a tenant of the property from the date of the foreclosure but from the date on which he has perfected his title and the tenant has notice of his having done so.—(*Raisuddin v. Khoda Newaz*, 12 C. L. R., 479).

Can a cosharer sue for rent.—A suit for a share of an arrear or arrears of rent by a person entitled to such share cannot be treated as a suit for an arrear or arrears of rent within the meaning of this section.—(*Hurishchunder v. Jogudumba Dasi*, 16 W. R., 61). In this case a suit against patnidars under Act X of 1859 to recover half the rent mentioned in their kabuliyut having been dismissed on the objection that the plaintiff's co-sharer had not been joined as co-plaintiff, and that the judgment having been upheld in appeal, the plaintiff brought a fresh suit under Act X making the co-sharer a defendant. Defendants again objected that the question as to plaintiff's share being still open it could not be decided in the Collector's Court. That suit was also dismissed and the dismissal upheld in appeal. Plaintiff then brought her suit in the Civil Court.

It was held that section 29 of Act VIII of 1869 was not applicable to this suit, which was for a fractional share of certain arrears of rent after determination of a question raised by defendants for their own purposes and came under the ordinary Procedure Code, Act VIII of 1859. So it has been held that an undivided co-sharer cannot maintain a suit for arrears of rent against the joint tenant, in the absence of the other co-sharers, unless the raiyat paid or agreed to pay his rent separately—(*Dinabundhog v. Dinanath*, 19 W. R., 168; *Musst. Lalun v. Heraraj*, 20 W. R., 76; *Gunganarain v. Sharoda*, 12 W. R., 30; *Srimisser v. Crowdy*, 15 W. R., 243; *Indramoni v. Suroopchunder*, Id., 395; *Haradhun v. Ram*, 17 W. R., 414; *Suphoonissa v. Moheshchunder*, Id., 452; *Bhyru v. Gungaram*, Id., 408; *Hurkishore v. Joogulkishore*, 16 W. R., 281; *Ramjoy v. Nagur Gazeer*, 5 W. R., Act X, 68; *Beneemadhub v. Thakoordass*, 6 W. R., Act X, 77, F. B.). *Per contra* it has been held that shareholders whose shares are clearly ascertained may sue for their respective shares of the rent payable to them without adding the other co-sharers as parties—(*Amrit v. Syed Hyder*, Sp. W. R., Act X, 68; *Mahomed v. Musst. Mughy*, 1 W. R., 253; *Nanoo v. Joomuklal*, 18 W. R., 376); and that one of two co-sharers may sue for rent, making the other a defendant in the suit—(*Jagudumba v. Haran*, 10 W. R., 108; *Hurish v. Jagudumba*, 16 W. R., 61). Amidst this conflict of opinions, a case was lately referred to a Full Bench. In delivering the judgment of the Full Bench, Mr. Justice Jackson observes: "There is a class of suits in which I have on several occasions expressed an opinion that the plaintiff is not entitled to sue separately, that is to say, where several persons being jointly entitled to receive rent from a raiyat, and having been accustomed to receive such rent jointly afterwards, one or more of them brought separate suits against such raiyat in respect of their separate shares. In those cases it was held that the nature of the contract or holding being such that the raiyat was accustomed to pay his rent in one sum to the joint agent of the owners, he ought not to be harassed by being sued in several suits in respect of the portions of the same claim. Here the case is different. The owners, it is true, have been accustomed to collect the rents jointly (at least I understand that to be the finding) and by a joint agent; but the parties who have been made defendants along with the raiyat had subsequently taken from the raiyat, with his consent, their own separate shares of the rent, and the suit which the plaintiff brought was in effect a suit to recover an arrear, which arrear corresponded with his own share of the rent which the raiyat had vexatiously and collusively refused to pay." Further on, the learned Judge remarks that, "in point of fact, the conduct of the defendant was not that of a raiyat who complained of being subjected to several suits in respect of one claim, it was that of a raiyat entering into a collusion with two out of three co-sharers for the purpose of depriving the third. Under these circumstances it is difficult to see what other course was left to the plaintiff than to sue these parties in order to recover that which was justly due to her and to her alone: I therefore think that the suit was properly maintainable"—(*Doorga Churn v. Jampa*, 21 W. R., 46, F. B.). In a later case it has been held by Couch, C. J., that when rent is due by a tenant to several co-sharers it constitutes a debt from the tenant to the landlords jointly, and that no one of those landlords has a right to treat a part of the rent as a separate debt due to him. The rent ought to be sued for in one suit, and the persons jointly entitled to receive the rent ought to be the plaintiff. If a co-sharer, desiring to bring a suit for rent due, cannot join the others as plaintiff, with their consent he may claim the whole of the rent which is due and ask the Court, under Act VIII of 1859, section 73, to make the other co-sharers plaintiffs with him—(*Tara Chand v. Ameer Mandle*, 22 W. R., 394; *Koyburto v. Shoshi Mohan*, 22 W. R., 526; *Bihar*,

lall v. Radha Nath, Id., 229). Where tenants hold land by different agreements the zemindar has no right, without their consent, to break up existing holdings and redistribute lands so as to alter the extent and nature of the holdings—(*Rahamuddy v. Poorno Chunder*, 22 W. R., 336). Where a tenant, knowing that a co-proprietor has been in possession of a share for a very long time, and after distinct notice paid rent which belonged to the said sharer to another person who had no title at all, it was held that a suit by that single proprietor for his share of the rent was maintainable—(*Dino Bundoo v. Ooma Churn*, 23 W. R., 53). A suit by a sharer in a taluk against a raiyat for an aliquot part of the rent wherein plaintiff made her co-sharers defendants, as they had resisted her right to have any share of the rent at all, should be treated as a suit on behalf of all the shareholders collectively—(*Mookhoda Sundari v. Kareem*, 23 W. R., 11, *per* Phear, J.; *Brojo Kishore v. Oma Sundari, Id.* 37). A suit for rent cannot be maintained under the Rent Law where the defendant is himself a co-sharer in the same estate but not an ordinary tenant—(*Dinabundhoo v. Dina Nath*, 19 W. R., 168). It has been held that such suits will lie in Civil Courts under the ordinary Civil Procedure Code—(*Syed Hyder v. Omrit*, Sp. W. R., Act X, 42; *Mithun Lal v. Shaik Nadur*, 1 W. R., 53; *Huro Chunder v. Obhoy Churn*, 2 W. R., Act X, 72). The legal position of co-sharers in an estate occupying separate portions in it is, that each possesses and holds in respect of his several rights to enjoy that which is his own. If one holds a portion larger than his share, the inequality may be rectified by a partition, or if a dispute arises on a division of the annual profits it may be adjusted in a suit for an account; but such a suit is not cognizable under the Rent Law. But where a co-sharer occupies a larger portion than his own share, by renting the land he occupies from one or more of his co-sharers, he may be sued for that rent under this Act by the person or persons with whom he engaged. Separate rent suits may be brought by each of his co-proprietors if there is an agreement, express or implied, to pay separately to each his share of rent—(*Kalee Pershad v. Shah Lutafut Hossein*, 12 W. R., 418; *Gobind Coomar v. Manson*, 23 W. R., 152.) If *ijmali* property is let to a tenant at an entire rent, the rent is due in its entirety to all the co-sharers, and all are bound to sue for it; no one co-sharer can sue to recover the amount of his share separately whether the other co-sharers are made parties or not. But if the land demised ceases to be *ijmali*, and different portions of it become the property of different owners, any one of the owners, may sue for so much of the rent as he considers himself entitled to, making the other owners parties to the suit. Where co-sharers of *ijmali* land let to a tenant at an entire rent brought a suit against their tenant to recover their proportionate shares of the rent, and made the other co-sharers defendants, avowedly for the purpose of obtaining an adjudication of their title as between themselves and the defendants other than the tenant, *Held*, that as the area of the property had not been divided, as the rent had always been paid in its entirety, and as the title of all the co-sharers remained *ijmali*, the suit would not lie—(*Annoda Churn v. Kali Kumar*, I. L. R., 4 Cal., 89) Where it has been arranged between the co-sharers of an estate and their tenant, that he shall pay each co-sharer his proportionate share of the entire rent, each co-sharer may bring a separate suit against the tenant for such proportionate share. In the absence of such an arrangement no such suit can be maintained. Such an arrangement may be evidenced either by direct proof or by usage from which its existence may be presumed, and is perfectly consistent with the continuance of the original lease of the entire tenure—(*Guni Mahomed v. Moran and Doorga Prosad Mytie v. Joy Narain*, I. L. R., 4 Cal., 96; F. B.) Where a tenant who held under co-sharers, to whom he had been accustomed to pay his rent

jointly, was sued by one of the co-sharers, the others being made parties to the suit, and pleaded that he had paid the rent to his co-defendants who admitted receipt thereof, it was held that the suit should be dismissed, the remedy of the co-sharer who has not received his share of the rent being against his co-sharer, not against the tenant—(*Ahamuddin v. Grish Chunder Shamunt*, I. L. R., 4 Cal., 350). A co-sharer, on the allegation that a tenant, in collusion with the rest of the co-sharers in the estate, had withheld payment of his rent (hitherto paid jointly to all the co-sharers) brought a suit for the recovery of his share of the rent, making the tenant and all the colluding co-sharers defendants in the suit : It was held that the suit was maintainable under the Full Bench decision of *Doorgachurn Surma v. Jumba Dasi*, 12 B. L. R., 289 ; 21 W. R., 46—(*Jadu Das v. Sutherland*, I. L. R., 4 Cal., 556). A sale of a share in a tenure, let out to a tenant in its entirety, does not of itself necessarily effect a severance of the tenure or an apportionment of the rent ; but if a purchaser of the share desires to have such a severance, he is entitled to enforce it. If he takes no steps for that purpose, then the tenant is justified in paying the entire rent to all the parties jointly entitled to it. But if the purchaser desires to effect a severance of the tenure and an apportionment of the rent, he must give the tenant due notice to that effect, and then if the parties cannot agree to an apportionment, the purchaser may sue the tenant for the purpose of having the rent apportioned, making all the other co-sharers parties to the suit—(*Ishwarchunder v. Ram Krishna*, I. L. R., 9 Cal., 902 ; F. B., 6 C. L. R., 421). The plaintiff, alleging himself to be a 14-anna shareholder in a zemindari, sued for proportionate share of the rent due to him as such shareholder—the other co-sharers were made defendants, but did not contest the suit : It was held that inasmuch as it had been shown that the tenant-defendant had, on previous occasions, paid the plaintiff rent separately, though not in the proportionate share now demanded by him, and it being further to be presumed that the co-shares admitted the plaintiff's claim, such suit would lie—(*Gunganarain Sircar v. Sreenath Banerji*, I. L. R., 9 Cal., 315 ; 6 C. L. R., 16). Where on the consent of all the shareholders, landlords, a tenant in a undivided property has agreed to pay the different sharers the rent of the tenure in proportion to their respective shares, and can be and has been sued for the rent of a particular share, it is not open to such tenant to cease from paying the proportionate fraction of the rent due in accordance with his agreement, except on the consent of the owner of that particular share. Where co-sharers in an undivided property acquiesce in a decision declaring one of their number the owner of a recognized share in such property, it is not open to a tenant (who had previously agreed to pay his rent in accordance with the sharers of the respective part-owners) to refuse payment of the proportionate share of the rent claimed by such co-sharer as the owner of the recognised share, simply on the ground that he had never before paid rent so proportioned to such co-sharer—(*Lootfulluck v. Gopal Chunder*, I. L. R., 5 Cal., 941 ; 6 C. L. R., 402). Where one of a number of co-sharers of certain property, the rent of which was paid by the tenants to a person acting as agent of the co-sharers, from whom they received it in proportion to their respective shares, brought a suit against the tenants for arrears of rent, and it appeared that the agent had been dismissed by the other co-sharers without the consent of the plaintiff, and contrary to her wish, and that she had given notice to the tenants to continue the payment of her share as before and not to pay any newly-appointed agent, and it also appeared that the other co-sharers were colluding with the tenants, and the plaintiff made them parties, defendants, with the tenants, it was held that such a suit would not lie, and that the proper course to pursue was that pointed out in *Tara Chunder Banerji v. Ameer Mundle*, 22

W. R., 394; (*Jadoo v. Kadumbini*, I. L. R., 7 Cal., 150; 8 C. L. R., 445). One of several co-sharers can bring a suit for rent, making his co-sharers parties, only when he claims in such suit the whole rent due to all the shareholders, or where any portion of it has been paid, the whole unpaid balance—(*Dino Nath v. Moharrum*, 7 C. L. R., 138).

Intervention in Rent suits:—In suits under Act X of 1859, a third person could intervene and claim the right to receive rent from the defendant under the provisions of section 77 of that Act. Section 77 ran as follows: "When in any suit between a landlord and a raiyat or under-tenant, the right to receive the rent of the land or tenure cultivated or held by the raiyat or under-tenant is disputed, and such right is claimed by or on behalf of a third person on the ground that such third person, or a person through whom he claims, has actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, such third person shall be made a party to the suit and the question of the actual receipt and enjoyment of the rent by such third person shall be inquired into, and the suit shall be decided according to the result of such enquiry." In cases of intervention under that section the party in actual and *bonâ fide* receipt and enjoyment of rent before and up to the commencement of the suit, was entitled to a decree without any reference to the question of a legal title to the property—(*Nawab Nazim of Bengal v. Puddo Lochan*, 5 W. R., Act X, 26; *Synd Jessin v. Narain*, Id., 56; *Kishen Kumar v. Jobun*, Id., 85; *Jugurdee v. Radha Kishore*, 13 W. R., 259). An intervenor must not only show that he received rent, but that his receipt was *bonâ fide*—(*Woomesh Chunder v. Bhogobanchunder*, 9 W. R., 305; *Huronath v. Prannath*, 7 W. R., 85). Intervenor can now be admitted only under the provisions of section 73 of Act VIII of 1859 (ss. 32 & 28 of Act XIV of 1882). That section empowers Civil Courts to make persons "who may be entitled to, or who claims some share or interest in the subject-matter of the suit, or who may be likely to be affected by the result," parties to a suit. It is not necessary to admit an intervenor in a rent suit under this Act, if his interest cannot be injured by a decree therein—(*Issur Chunder v. Bepin Behary*, 16 W. R., 132). The effect of the transfer of jurisdiction as to rent suits from the Revenue Courts to the Ordinary Civil Courts is not to enable plaintiff to expand the provisions of the law relating to them and the intervenors, which merely refers to the previous enjoyment of the rent, into a trial of an entirely new and complicated issue between plaintiffs and some other person claiming title to the estate, but a suit for rent under this Act must be a *bonâ fide* suit for rent and so not to be a trial of a wholly different issue between parties advancing conflicting claims of ownership to the estate—(*Radha v. Sristi Narain*, 21 W. R., 83 *per* L. S. Jackson, J.; *Bykunta Kyburto v. Shoshi Mohun*, 22 W. R., 526). A party who is out of possession has no right to come to Court and ask for a decree for rent with the view of bringing in a third party, and having tried under the title of a rent suit, all questions of title between himself and that third party. Such a proceeding is altogether opposed to the principle laid down in section 73, Act VIII of 1859—(*Doyal Chunder v. Nobin Chunder*, 16 W. R., 235). By section 73 the Court is authorized, at any hearing of a suit, to put a person upon the record who is not already a party to the suit, in the event of its appearing that the person would be prejudiced or might be prejudiced by a decree passed between the existing parties to the suit. In a suit for rent brought against a tenant by a person claiming to be in the situation of a landlord, the Court ought not to put on the record a person who prefers opposing claims to the plaintiff, unless it sees that his position, as such opponent, would be seriously compromised by the result of a decree made in favor of the plaintiff against the party sued; and when once an intervenor has been put

upon the record, the Court cannot well avoid trying all questions which naturally arises upon the plaint as between the plaintiff and the intervenor-defendant, and it will try these questions upon the issues which are framed between the parties—(*Choolie Singh v. Kokil Singh*, 19 W. R., 249, *per* Phear, J.). Where Act X of 1859, section 77, is no longer in force, the effect of adding a party under Act VIII of 1859, section 73, in a rent suit is the same as in any other kind of suit. Whatever be the class of suit, the party added cannot raise an issue which would entirely change the nature and scope of the suit; the Court having to limit its enquiry to the issue necessary in order to try the plaintiff's right to special relief sought; *e. g.*, where the relief sought is the recovery of the arrears of rent, the intervenor is competent to raise all questions, whether of title or otherwise, which bear upon the issue,—Is the plaintiff entitled to recover the rent claimed?—(*Rani Tillessuri v. Rani Ashmed*, 24 W. R., 401, *per* Mitter, J.; *vide* also *Dinanath v. Grish Chunder*, 23 W. R., 435). An intervenor in a suit for rent had no right to be made a defendant, and to introduce entirely new issues of title; but where he had been made a party without objection on the part of the plaintiff in the first Court it was held that the objection could not be taken in special appeal—(*Biresvar v. Jogendra Chunder* 24 W. R., 261; *Luchmidhur v. Raghoobur*, *Id.*, 286). In a suit for rent, where a third party intervenes, the Court does not err in law in going into the question of title where this is necessary in order to decide who has been in the enjoyment of rent—(*Radhamoni v. Ramnarain*, 22 W. R., 440). Parties who choose to buy property in another person's name, and allow that person the opportunity of dealing with it as his own, cannot be allowed in equity to intervene in a suit brought by him for the rent of such property—(*Smith v. Makhun*, 18 W. R., 526). In a suit by a landlord to recover arrears of rent from tenants who had been forcibly compelled, by the superior holders of a nature over the plaintiff, to execute a *kabuliyat* to themselves and to pay rent accordingly, it has been held that such wrongful act of the intervenor-defendants (the superior holders) was not, in law, sufficient to constitute an ouster of the plaintiff or to destroy the relation of landlord and tenant between the plaintiff and the defendants, so as to relieve the latter of the liability to pay their just debt to their landlord—(*Chunder Nath v. Jugut Chunder*, 22 W. R., 337). In a suit for arrears of rent, in which an intervenor, who was made a defendant, alleged that the land, the rent of which was claimed by the plaintiff, was not really *mâl* land, but that it was *lakheraj* land belonging to her, it has been held that, as the interest which the intervenor claimed was in the land, and not in the rent which was the subject-matter of the suit, the decree (if the plaintiff should obtain one) would not be prejudicial to her; that she should not have been made a party; and that as no decree had been passed against her, but the suit had been decreed against the original defendants, the tenants, she had no *locus standi* in the Court of Appeal—(*Kattayanee v. Grish Chunder*, 23 W. R., 168; *Ishur Chunder v. Bipin Bihari*, 16 W. R., 132; *Biresvar v. Jogendra Chunder*, 24 W. R., 261). Where in a rent suit a third party gets himself made a party under section 73, the issue between him and the plaintiff being whether the property formed part of one *mouzah* or another, it was held that he should not have been made a party—(*Gooroo Prosunno v. Juggut Chunder*, 20 W. R., 384). A lower Appellate Court has no authority to transfer intervenors, who had been made defendants by the first Court, to the side of the plaintiff against their will, unless there is such an equity on the part of another as to compel them to such—(*Biharilal v. Radhanath*, 22 W. R., 229). Where the purchaser of a *zemindari* sues a tenant-at-will and the third party to whom the *zemindar* had granted a *patti* of the land intervenes, the issue, whether the *zemindar* transferred his rights to the

plaintiff or had previously transferred them to the intervenor is material—(*Gooroo Prosunno v. Sreegopal*, 20 W. R., 99). The mere failure of an intervenor to establish his claim does not entitle the plaintiff to a decree. The plaintiff must prove his case before he can get a decree—(*Nawab Nazim of Bengal v. Poddolochun Mundle*, 5 W. R., Act X, 26; *Jogurdeo v. Radha Kissors Talukdar*, 13 W. R., 259). Under section 77 of Act X of 1859, it appears that a person was not allowed to intervene in a rent suit on the allegation that he, and not the party sued, was the real tenant. That section applied only to rival landlords in receipt of rent. But section 73 of Act VIII of 1859 has given a wider scope to the intervenors. Any one whose interest may be affected by the result of the suit is entitled to be made a party. Thus where B intervenes in a suit for arrears of rent, stating that he had acquired the rights of the tenants and had paid rent to the plaintiff, and the Munsiff finding these allegations true, made B a third party in the case, but dismissed the suit on the ground that the right person has not been sued, it was held that when B was made a defendant, there should have been a decision come to between him and the plaintiffs and the relief given where due—(*Moodhoo Sudun v. Bidhoo Bhusun*, 22 W. R., 384, *per* L. S. Jackson, J.) It is the registered tenant or any one whom the zemindar has recognized as such, who has the right to be admitted as a third party. A stranger has no right to question a decree passed against the registered tenants—(*Amutal Fatima v. Taranath*, 24 W. R., 151.) In a suit for enhanced rent an intervenor has no right to be made a defendant—(*Kaleenath v. Ishur Chunder*, 11 W. R., F. B., 23). Where a person sued for rent sets up the title of a third party, and alleges that he holds under, and pays rent to him, such third party ought not to be made a party to the suit so as to convert a simple suit for arrears of rent into one for the determination of the title to the property in respect of which the rent is claimed. Such a suit raises only two issues, *viz.*, (1) Does the relation of landlord and tenant exist between the plaintiff and defendant? (2) Are the alleged arrears of rent due and unpaid? And these are questions in which the plaintiff and defendant are alone concerned, and no third party claiming a title adverse to the plaintiff can properly be made a party to the trial of these issues. Section 28 of the Civil Procedure Code is not imperative, but allows a discretion to be exercised; and in such a suit it is better, both in the interest of the Government and for the proper adjudication of the question of title, that it should be tried by a competent Court in a suit directly framed and brought for that purpose—(*Lodai Mollah v. Kally Dass*, 1 L. R., 8 Cal., 238; 10 C. L. R., 581,) *per* Field, J. See section 149 *post*, and notes. In a suit for arrears of rent, in which an intervenor, alleging that the plaintiff was merely his benamidar was added as a defendant under the Code of Civil Procedure, section 72, it was held that it was wrong to introduce him into the case, and that any issue as to the alleged benami was foreign to the suit—(*Rughoonath Prosad v. Byjnath*, 24 W. R., 349). Plaintiff who derived title from A, who was the ostensible purchaser of certain immoveable property at an auction-sale in execution of a decree against B, brought a suit to recover the rent of such property from the talukdars. The appellant was allowed to intervene, alleging that A was the benamidar of a third person from whom he himself had purchased the property. The lower Courts however refused to try the question of benami as not being admissible in a rent suit. On appeal, *held* that the question of benami was properly raised in the suit and ought to have been tried—(*Tarini Kant v. Krishna Moni*, 5 C. L. R., 179). The Court distinguishes this case from the former thus: "Here there is no question as between the benamidar and the beneficial owner, *i. e.*, between Gagan Chunder as benamidar and Goluknath as beneficial owner. It is

Benami-holder.

admitted that Gagan Chunder, although the recognized purchaser of Bisva-nath's interest at the execution sale, never exercised proprietary rights by collecting rent, &c. Consequently as between the plaintiff, who derive from Gagan Chunder, and the intervenor-defendant, who derive from Goluk Nath Chowdry, the question is fairly raised and ought to be determined, namely, which of the two is entitled to the rent. If the lower Court thought that this question of title could not be raised in a rent suit, it ought not to have admitted the intervenor-defendant as a party to the suit, but having admitted him it ought to have tried the issue which he raised." T sued for arrears of rent on a specific share of a tenuro. G intervened, denying T's right and title, and claiming the right to receive the rent claimed as against G. *Held*, that the question of title having been determined, G could not sue to re-open the same matter—(*Gobind Chunder v. Taruk Chunder*, 1 C. L. R., 35). In a suit for rent, where the defendant alleged that a person, not on the record, had a joint interest with the plaintiff in the property in respect of which the rent was due, it was held that, if the plaintiff disputed this and objected to such course being taken, it was improper to add such person as co-plaintiff, and that, if added at all, he should be a defendant, in order that the issue between him and the plaintiff might be properly tried; and also that in such case an appeal lies under section 591 of the Civil Procedure Code—(*Googhe Sahoo v. Premal Sahoo*, 1 L. R., 7 Cal., 148.)

A rent suit should lie against the recognised raiyat:—See pp. 84-87 *ante*. Before arrears of rent can be recovered in a suit under this Act, the landlord must show that the raiyat holds a tenure under him—(*Mahomed Ahsan v. Kisto Sundar*, Sp. W. R., Act X, 31; *Sheik Kazi v. Lloyd*, 8 W. R., 464). A suit for rent is maintainable against the person in possession as tenant—(*Gungaram v. Bissessur*, 6 W. R., Act X, 32; *Jerabootnissa v. Ram Chunder*, *Id.*, 36). When land is let to several raiyats a suit for rent cannot be brought against one only of them—(*Roop Narain v. Juggoo Singh*, 10 W. R., 304.) A zemindar is not bound to recognize as his tenant one whose name has not been registered in his books; and when his rent becomes due and is not paid, it is sufficient for him to bring his suit against the parties from whom he has hitherto received rent—(*Sudun Chunder v. Gooroo Churan*, 15 W. R., 99.) A zemindar is bound only to look to his registered tenant, and the equivalent of that registration may be presumed where he receives rent from his tenant in recognition of his tenancy—(*Dhunput Sing v. Villayet Ali*, 15 W. R., 211; *Anand Moyce v. Mohendra Narain*, *Id.*, 264). A landlord, by accepting rent from a raiyat, recognizes him as his tenant—(*Nobo Kumar v. Kishen Chunder*, Sp. W. R., Act X, 112; *Bharut Roy v. Gunga Narain*, 14 W. R., 211; *Ram Gobindo v. Doshobhuj*, 18 W. R., 195.) Whatever may be the rights of the members of the family of a lessee of certain lands as between themselves, the zemindar is not bound to recognize the title of any one beyond the person to whom he has granted leases, and to whom alone he looks for rent—(*Woopendra Mohan v. Thanda Dasi*, 18 W. R., 195). A zemindar may, however, sue the real lessees for rent, leaving out the ostensible owner whose name appears in his sherista, and who is *primâ facie* the person liable for rent—(*Prosunno Chunder v. Koilas Chundra*, 8 W. R., 428, F. B.; *Jadu Nath v. Prosunno Chunder*, 9 W. R., 71.) The assignee of a claim for rents can sue under the Rent Law. A suit for arrears due under an assignment of rent is a suit to recover arrears of rent within the meaning of this Act—(*Kishen Koomar v. Mohesh Chunder*, Sp. W. R., Act X, 3; *Hari Nath v. Moran & Co.*, *Id.*, 127; *Shama Sundari v. Brindaban Chunder*, 1 Hay, 574.) A zemindar who has obtained a decree for arrears of rent of a transferable tenure is

entitled to sell the tenure; and a person who has obtained the transfer of such tenure which he has not registered and cannot show a sufficient cause for not registering it is bound by the sale and cannot set up a title which he has acquired by a previous sale—(*Sham Chand Kundu v. Brojonath Pal*, 21 W. R., 94 F. B.) Where a landlord registered a new tenant with his express or implied consent in the place of the old tenant, the new tenant becomes for the future as much personally liable for the rent as the old tenant was; and this personal liability continues, notwithstanding a fresh transfer or devolution of the tenure, unless proper steps are taken to apprise the landlord of the change and to have it registered in his sherista. A suit having been brought in 1284 for arrears of rent of a durputui for the years 1281-83, and part of 1284, against the widow and heiress of the former durputnidar, who died in 1256, A. pleaded that she was not the representative of her husband, as in 1276 she had adopted a son. Whereupon in 1285, more than three years from the time the rent of 1281 became due, the son was made a defendant. It appeared that from the time of her husband's death A. had allowed her own name to remain on the sherista of the plaintiffs, and that the plaintiffs had no notice of the adoption. It was held that the claim for the rent of the year 1281 was not barred as against A. and the tenure, but that no decree could be made against the son in respect of it—(*Dwarka Nath v. Nobungo*, 7 C. L. R., 283). In execution of a decree against one of several joint-holders of a tenure, when it is clear that what is sold, and intended to be sold, is the interest of the judgment-debtor only, the sale must be confined to that interest although the decree-holder might have sold the whole tenure had he taken proper steps to do so, or, although the purchaser may have obtained possession of the whole tenure under the sale. But if, however, it appears that the judgment-debtor has been sued as representing the ownership of the whole tenure, and that the sale, although purporting to be of the right, title, and interest of the judgment-debtor only, was intended to be, and in justice and equity ought to operate as a sale of the tenure, the whole tenure must be considered as having passed by the sale. If the question is doubtful on the face of the proceedings, the Court must look to the substance of the matter, and not to the form and language of the proceedings. Where a judgment-debtor was alone registered in the sherista of the zemindar or owner of a tenure, but it appeared that his two brothers, who were joint in estate with him, were entitled to an equal share with him in the tenure, but that the judgment-debtor was the manager; and when it appeared that the zemindar being only entitled to a share in the zemindari had obtained a decree against the judgment-debtor alone for arrears of rent, and in execution thereof proceeded to sell his right, title and interest under section 64 of the Rent Act, it was held that, as the judgment-debtor represented his brothers, and as they were equally liable to pay the amount of the decree, upon the principle set out above, the latter were not entitled to recover their share of the tenure which the auction-purchaser had obtained possession of in execution of the decree against the judgment-debtor—(*Joolal v. Gunga Prosad*, 1 L. R., 10 Cal., 996. See p. 87 ante.) The mortgagee of an indigo factory foreclosed and took possession of the concern in the month of Jeyt 1282. The rents due from the raiyats for the year 1282 became due at the end of Jeyt 1282, and were collected by the mortgagee; the rents for 1282 due to the land-owners from the owners of the indigo concern also became due at the end of Jeyt 1282. It was held that the mortgagee in possession was liable for them—(*E. Macnaghten v. Bheekari Sing*, 2 C. L. R., 323.)

The mortgagee in possession liable for rent.

A landlord cannot hold both the nominal lessee and the benamidar liable for rent, but must make his election. "If he proves that the person in whose name the lease was taken was simply an agent for another, he can proceed against

In benami leases or transfers, the landlord may sue the real tenant.

that other, unless he elects to sue the agent on his written contract, in which case he cannot go against the principal.”—(Sheik Kamyab v. Musst. Omda Begum, Act X, 88). The same view seems to have been maintained in *Prosunna Kumar v. Kailas Chunder*, 8 W. R., 428: F. B.. The question is in fact a question of undisclosed principal; and the following sections of the Indian Contract Act will throw some light upon it: “In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by himself on behalf of his principal, nor is he personally bound by them: such a contract shall be presumed to exist in the following cases: (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad; (2) where the agent does not disclose the name of his principal; (3) where the principal, though disclosed, cannot be sued.” (S. 230.) “If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal. If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal to the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.” (S. 231.) “Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract (S. 232). “In cases where the agent is personally liable, a person dealing with him may hold either him or his principal or both of them, liable.” (S. 233.)

Rate of Rent.—*Vide* section 51 which provides that a tenant shall be pre-

Onus.

sumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year. In a suit to recover arrears of rent from the defendants who, as ticcadars of the plaintiff's share in a certain mouzah, had been in possession from 1262 to 1281 without having paid any rent, the plaintiff who claimed a bhaoli rent at the rate of 9 annas of the crop, proved that in the mouzah in question the raiyats paid rent at that rate. Held that under the particular circumstances the *onus* was on the defendants who alleged that the proper rate was 8 annas to prove their allegation.—(*Lochan v. Anup*, 8 C. L. R., 426). In a suit for arrears of rent, where the plaintiff fails to prove the rate of rent claimed in the plaint, it is the duty of the Court to find the proper rate of rent payable by the tenant to his landlord, and not to give a decree merely for the rent admitted by the tenant.

The proper rate should be determined. In a suit for arrears of rent for the years 1283-5 at the rate of Rs. 2 per bigha, it was objected that the plaintiff had previously obtained a decree in respect of the same land against the defendant for the years 1281 and 1282, at the rate of 15 annas per bigha, and that they could not now claim at a higher rate, but it appeared that in that suit the Court did not find what was the *proper rent* payable by the defendant, but had merely given a decree at the rate admitted by him to be payable. It was held that, al-

Effect of decrees at a certain rate; res judicata or not.

though the decree for the rent of the years 1281 and 1282 was binding between the parties as to the rent of these years, it in no way estopped the plaintiffs in the present suit from proving the proper rate of rent for the years 1283-5.—(*Punnu Sing v. Nirghun Sing*, 8 C. L. R., 310; 1 L. R., 7 Cal., 298). In this case in the previous suit the rate was not determined, and the District Judge said in his judgment: “I record the fact that I do not find as a fact, that rent has hitherto been paid at

the rate alleged by the defendants. I merely find that it has not been paid at the rate alleged by plaintiffs"; and elsewhere "the defendants' case is very likely to be false." Hence the Court found that when both the plaintiffs and the defendants' allegations are false, the *proper and actual rate of rent* ought to have been determined; where it is not determined but a decree given according to a defendant's admitted rate which was not true, that decree will not bind the parties for rents of future years. Where, however, a rate of rent is determined and decreed to a landlord for a certain year, it is binding on the tenant as regards the ensuing years until the latter obtains a decree to a different effect—(25 W. R., 10). So in *Jeolal v. Surfun*, 11 C. L. R., 483, the plaintiff in a suit for rent having failed to prove the amount of rent claimed by him, the Court, in trying the issue "what is the proper amount of rent payable to the plaintiff," gave the plaintiff a decree for the amount admitted by the defendant, that amount being less than that claimed by the plaintiff. In a later suit, the plaintiff sued the defendant in respect of the same holding for the rent of a subsequent year, and he claimed at the same rate as he had claimed in the previous suit. It was held (Mitter, J., dissenting) that the decree in the former suit was *res judicata* as to the proper rent payable by the defendant.

An *ex-parte* decree for rent at a certain rate is not conclusive proof that the land was held for the years to which the decree relates at that rate, until it has been executed—(*Bance Madhub v. Bhagabut Pal*, 20 W. R., 466; *Bishnu Prosad v. Ramgiri Chella*, 20 W. R., 3). So where a suit is tried *ex-parte*, and no issues of facts are raised beyond the general issue involved in the claim, the decree considered as evidence is only evidence that the amount of rent decreed was at the time due from the defendant to the plaintiff, but it is no evidence of the amount of the rental of the holding—(*Goya Persad v. Tarini Kant*, 23 W. R., 149). But in *Maharajah Beer Chunder v. Ram Kishen*, 23 W. R., 128, F. B., 14 B. L. R., 370, Conch, C.J. observed:—"We are of opinion that the decree (which was *ex-parte* and time-expired) is admissible in evidence. The question of its value, when admitted, is to be determined by the Lower Courts." The same case again came to the Court after remand, and it was held that where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for the previous year in a suit which he had brought against the same defendant for rent of the same property, and relied upon the former decree, and which had been obtained *ex-parte* as evidence of the rent due to him from the defendant, it was held that the decree in the first suit determined the amount of rent due from the defendant to the plaintiff, and also that the decree was properly admissible as evidence, though the plaintiff had not taken out execution upon that decree, and his right to take out execution was barred by limitation—(*Bir Chunder v. Hurish Chunder*, 1. L. R., 3 Cal., 383). But those decisions do not find that the *ex-parte* decree is conclusive evidence. So it has been held that a decree obtained *ex-parte* is not final within the meaning of explanation 4, section 13 of Act X of 1877. Such a decree is not conclusive evidence of the amount of rent payable by the same defendant in another suit for subsequent rent of the same property. Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for a previous year in a suit which he had brought against the same defendant for rent of the same property, and relied upon the former decree, which had been obtained *ex-parte* and which he also alleged had been duly executed as evidence of the amount of rent due to him by the defendant, but it appeared that the lower Court had found that the alleged execution proceedings were fraudulent, and that no steps had been taken which gave finality to the decree, it was held that the decree was not conclusive evidence of the

amount of rent due from the defendant or of the questions with which it dealt—(Nilmoney Sing v. Heera Lal, I. L. R., 7 Cal., 23). The Court observed in this case: "Our present decision does not conflict with that in *Bir Chunder Manikya v. Hurish Chunder Das*, inasmuch as the question here is, whether the plaintiff had a right to use the *ex-parte* decree as conclusive evidence." This ruling was followed in *Bhagirath Patuni v. Ram Lochan*, I. L. R., 8 Cal., 275. It was a suit for rent of a half share of land, the plaintiffs relied upon an *ex-parte* decree for rent at a certain rate which they had obtained in 1869 against the tenants of this share. The defendants relied upon a subsequent decree in a contested suit by plaintiffs against the tenants of the other half share in which a lower rate of rent had been given. No other evidence than the decrees was produced on either side. It did not appear whether the *ex-parte* decree had been executed. *Held*, that it was open to the defendants to dispute the rate of rent and that the plaintiffs were bound to prove that they were entitled to recover it. In a suit for rent the plaintiff claimed that he was entitled to payment both in cash and kind; and in order to show that he was entitled to recover rent in kind tendered two *ex-parte* decrees obtained by his predecessor against the persons registered as tenants of the tenure at the time the decrees were obtained, such decrees being for rent both in cash and kind. It appeared that the defendant was the owner of the tenure at the time the two decrees were passed, having acquired the tenure by foreclosure, although he had not registered the transfer in the plaintiffs' books, and that he was not made a party to the suit in which the decree was passed. *Held* that as the defendant was not a party to the suit in which the decrees were obtained, and did not claim through the parties against whom they were passed, they were not admissible in the suit as evidence against him. The decision in *Sham Chand Kundu v. Brojônath Pal Chowdry*, 21 W. R., 94, does not lay down that a decree against a registered tenant is to be evidence for ever in future proceedings, against an unregistered transferee not a party to it, but all that that case decides is, that for the purpose of satisfying that particular decree, an unregistered transferee is bound by it whether he was a party to the suit or not, the tenure being liable for the rent—(*Ramnarain Rai v. Ramcoomar Chunder Poddar*, I. L. R., 12 Cal., 562).

Section 20 of Act IX of 1880 B.C. (s. 7 of Act X of 1871 B. C.) provides: "Every holder of an estate or tenure, in respect of which a return has been made as required by this chapter, shall be precluded from suing for or recovering—(a) any rent whatsoever for any land, holding or tenure, forming part of the estate or tenure to which such return relates, but which has not been mentioned in such return, unless it be proved that the holding or tenure for the rent of which the rent is claimed, was created subsequently to the lodging of such return; (b) rent at any higher rate than is mentioned in such return for any land, holding or tenure, included in such return, unless it be proved that the rent of such land or tenure has been lawfully enhanced subsequently to the lodging of such return: Provided that the Collector may at his discretion, at any time within six months from the presentation of any return made under this part, receive a petition correcting any such return; and on the acceptance of such petition may make such correction in the valuation of the estate or tenure as may be required, and as soon as the person in respect of whose estate or tenure the return and valuation have been so corrected, shall have paid in all sums due by him as road-cess and public works cess in accordance with such corrected valuation, and not otherwise, such person may recover such rent as may be due to him on any tenure or land included in the return of such estate or tenure at any rate not being in excess of the rate shown in the corrected return as payable in respect of such tenure or

land. Such notices as the Collector may direct shall be served upon the parties affected by such petition at the expense of the person lodging the return as aforesaid." Under this section it was held that as section 5 of the Roadcess Act requires the holders of any estate or tenure, of which the annual rent shall exceed one hundred rupees, to lodge returns, of all lands comprised in an estate or tenure, bhaoli lands ought to be included in such return, and where such a return has not been made, the holder of the estate or tenure is precluded from suing for or recovering any rent due therefor—(*Jug Mohun v. Finch*, 1. L. R., 9 Cal., 63; 11 C. L. R., 100). But the rate returned under the Roadcess Act may not be a

Not admissible in favour of the person who filed the return. true rate, and it is not admissible in evidence in favor of the zemindar against his raiyat or co-sharer. Section 94 of Act X of 1871 B.C., provided: "Every return filed by or on behalf of any person in pursuance of the provisions of this Act shall be signed by him or his authorized agent, and shall be admissible in evidence against him, but shall not be admissible in his favor." So section 95 of Act IX of 1880. (See *Musst. Naseerun v. Gour Sunker*, 22 W. R., 192). It has, however, been held that under section 13 of Act I of 1872, roadcess papers are evidence *quantum valet*—(*Daitari Mohanti v. Jugo Bundhu*, 23 W. R., 293). The roadcess papers are at best like other jumma-wasil-baki papers merely corroborative evidence. See p. 279.

In a suit for rent the Court should find what was the contract between the parties, what the area and jumma, and to what arrears (if any) plaintiff was entitled, and not proceed upon a kind of rule of proportion having reference to a former decision—(*Karoona Moyi v. Kripanath*, 18 W. R., 399). A zemindar and patnidar being bound together by the terms of a written contract, the patni potta, the zemindar can only sue for rent on the terms of that contract, but not for rent for the use and occupation of his land—(*Watson and Co. v. Tarini Churn*, 18 W. R., 494; *Dhunendra Chunder v. Laidlay*, 20 W. R., 400). In a suit for arrears of rent where defendant's plea of payment falls to the ground, the fact of plaintiff having sued upon a false ground is no reason why he should not obtain a decree at the rate fixed by a former decree as the proper rate demandable from the defendant—(*Kishen Mohan v. Rajoo*, 19 W. R., 233). When defendants admitted having held certain bhaoli land, but that it was washed away, and the first Court regarded the plea as untenable, it was held that this was not an absolute finding that there had been no diluvion, and that the Court was not bound to fix on defendant's admission and hold him liable for rent of the bhaoli land—(*Chamaroo v. Tota*, 19 W. R., 430). When a landlord sues a raiyat

Kabulyat. for arrears of rent alleged to be due under a kabulyat, and the Court finds that such kabulyat has not been executed by the defendant but it appears notwithstanding that the raiyat occupied the land under the zemindar, the landlord's right to have a further trial of the question whether any rent and how much is due will depend upon the claim stated in the plaint. If that claim is in the alternative and the raiyat thus has notice that on failure to prove the kabulyat, the landlord will claim rent for the occupation of the land, the landlord is entitled to have that issue tried; but if a claim for rent on account of such occupancy is not in the plaint, the landlord is not so entitled, although it is in the discretion of the Court to amend the plaint on the issue, and when the omission has been from inadvertence or mistake, it would generally be proper to do so—(*Lukhi Kanta v. Samuruddin*, 21. W. R., F. B., 208). Although a plaintiff need not be tied down to the exact form of his plaint, yet when he seeks to introduce any change, he must show that the view of the matter which he now puts forward had been in the contemplation of the parties,

so that they had an opportunity of bringing forward evidence on the point, and that the evidence on the record was directed to the substantial case set up. In a suit for arrears of rent plaintiff must show that there was some contract to pay rent entered into by defendant. This may be shown either by the evidence of some specific contract or by evidence of previous payment from which a contract could be inferred—(*Luchmeeput v. Sheik Enyet*, 22 W. R., 346). But when a plaintiff simply sues on a kabulyat and fails to prove it, his suit must be dismissed—(*Bhyrub Chunder v. Haradhun*, 2 Hay, 666). So where the claim was at the rate fixed by the Revenue officer acting under Act VI (B. C.) of 1862, section 10, and was dismissed on the ground that the officer had not the power to assess such rent as he thought proper, it was held that the plaintiff, whose claim was not in the alternative, was not entitled to a decree at the rate previously paid—(*Dwarka Nath v. Ram Lochun*, 23 W. R., 465); and when a landlord fails to prove his kabulyat, and there is no evidence to show what rate of rent he is entitled to, it is not wrong to take as rent the amount admitted by the defendants—(*Rohinee Kant v. Shureekoonissa*, 20 W. R., 64). Similarly when a landlord sues his tenant for rent due at a certain rate, but fails to prove his claim to more than the defendant admits, he is entitled to a decree for the amount admitted to be due—(*Hulodhur v. Seetul Chunder*, 23 W. R., 85). In a suit for arrears of rent where plaintiff failed to make out his claim to bhaoli rent,

and the first Court, finding that there was evidence of a commutation, dismissed the suit with a reservation of the plaintiff's right to bring a fresh suit for nukdi rent, and the lower Appellate Court finding that the defendant had admitted owing rent in money, decreed the claim to the extent of the admission, it was held that the lower Appellate Court was right, and that the reservation of right by the first Court was of doubtful operation—(*Musst. Bibi Jan v. Bhajul Sing*, 21 W. R., 438). In a suit for bhaoli rent where the quantity of land is disputed and the landlord produces as evidence a khusra or appraisement of the land, it is not necessary for him to show that the estimate was drawn up in defendant's presence and acknowledged by him but only that defendant had notice when the khusra was about to be made—(*Haree Narain v. Beljeet Jha*, 24 W. R., 125). Where a proposal of a nukdi settlement is refused by a tenant who has heretofore paid rent in kind, but whose tenancy has expired, the landlord is quite at liberty to let the land to another person—(*Budhoo Raot v. Dursun Mahaton*, 24 W. R., 218). A landlord who refuses to accept bhaoli rent or rent in kind when offered to him, on the ground that he is suing for a money rent, cannot on the dismissal of his suit, come into Court again and sue his tenant for the value of what he refused when it was proffered—(*Mohunt Narain v. Gour Sarun*, 23 W. R., 368).

Cesses:—Cesses recoverable under any enactment are 'rent' within the meaning of its definition—See section 3 (5) p. 35. For "illegal cesses," see section 74 and notes *post*.

Roadcess and Public Works cess are recoverable under section 25 of Act X of 1871 B. C., (section 47 of Act IX of 1880 B. C.). in the same way as rent. But where the defendants executed

Illegal cesses.

a kabulyat, dated the first October 1870 which contained the following stipulation: "If in future any chowkedari tax or any other new abwab or tax or fee or kor or any additional fee or jumma be fixed upon the mehal by Government, I will pay that separately" in a suit by the zemindar for increase of rent the defendant claimed to set off a sum representing the amount which the zemindar was bound to contribute under the Roadcess Act and Public Works Cess Act and which amount they had paid to the Collector: It was held that the amount

in question came within the terms of the kabuliyat, and that the defendants were not entitled to the set off claimed by them—(*Shumbhunath v. Huro Sundari*, 11 C. L. R., 140). In 1862, at the time the income tax was in force, A made a patni settlement of certain land with B, B agreeing to pay any enhancement of the revenue that might be made by Government at any time, or “any impost in future to be laid by Government, the income tax to be paid by A according to his income, B having nothing to do with the same.” In 1876 A brought a suit against B for arrears of rent. B, under the contract, claimed to have set off as a tax on income, a sum which he had paid under the Roadcess Act which had been passed in 1871, after the Income Tax Act had been repealed. It was held that the tax imposed by the Roadcess Act passed by the Bengal Council could not be considered to be a tax on income; the income tax having been a tax imposed by the Government of India on a person’s annual income, levied upon whatever actually came to his hands as income, and not upon the value of his property, and that therefore B could not set off the amount as being income tax. It was also held that, although the Roadcess Act contains no saving clause in favor of contracts, it does not prohibit in future the making of contracts which shall interfere with the incidence of the roadcess as directed by the Act, nor vacate contracts that may have been made before the passing of the Act; and in the absence of any provisions to that effect, an agreement entered into before the passing of the Act could not be affected by the subsequent passing of the Act—(*Surnomayee Debi v. Kumar Pureshnarain Roy*, 1. L. R., 4 Cal., 576).

Proof and Evidence:—As to the proof required to prove receipts, see p. 221 *ante*. Also as to the value of juma-wasil-bakis, see pp. 221, 222. Settlement papers are simply corroborative evidence—(*Bunwarilal v. Furlong*, 9 W. R., 239). So it has been held that a settlement officer is bound to record in the jumma-bundi the existing rights of cultivators and cannot impose an enhanced rent without notice. “If he acts in contravention of the law, and enters in a jumma-bundi a higher rate of rent than the tenant admits to have paid in previous years, and does so, as has been found in this case, in spite of protest on the part of the tenant, such entry does not conclude the tenant from showing when he is sued for rent that the jumma-bundi does not correctly represent the conditions of his tenure, and that he is not liable for the rent therein recorded, the correctness of which he has never admitted—(*J. W. Ledlie v. Doorga Moni*, 21 W. R., 410). So where increased rent is imposed in the course of settlement proceedings, the Collector’s jumma-bundi must show the consent of all the raiyats before they can be held to be bound by it—(*Reazuddin Mahomed v. McAlpyne*, 22 W. R., 540; *Enyutully Mea v. Nobo Kumar*, 20 W. R., 207). The settlement proceedings cannot be supposed as decrees; if so treated, it must be shown that the raiyats had paid rent as fixed by the jumma-bundi—(*Woomamoye v. Kunyk Chandra*, 17 W. R., 418; *Grant v. Byjnath Tewari*, 21 W. R., 279; *Contra Doorga Charan v. Doyamayi Dasi*, 20 W. R., 243). Settlement papers of khas mehal cannot be considered public documents. They have no more authority than the papers coming from a zemindar’s private sherista—(*Nawab Nazim of Bengal v. Ramlal*, 6 W. R., Act X, 5). An authenticated copy of a hustabood paper of 1209, of which the original was put into the Collectorate by the zemindar according to Regulation VII of 1800, was held to be no evidence against third parties, defendants in a rent suit—(*Ram Nurshing v. Tripura Sundari*, 9 W. R., 105). The entry in the canungoe papers is not any evidence against the raiyat—(*Kheromoni v. Bijyogobindo*, 7 W. R., 534; *Dwarkanath Chakravarti v. Tara-*

sundari Burmonya, 8 W. R., 517). Butwara papers are only evidence of the proportionate assessment payable by proprietors after partition; but not evidence binding raiyats as to what holdings are theirs, or what their areas, rates or periods of occupancy—(*Drobomayi v. Dhurmo Dass*, 10 W. R., 197; *Gopal Chunder v. Madhub Chunder*, 21 W. R., 29). But Government chittas of Nowabad mehals in Chittagong are admissible as evidence under section 58, Act II of 1855—(*Mahomed Fedye v. Ozeesoddin*, 10 W. R., 340). Chittas made by the Revenue authorities in the course of measurement of a Government mehal stand precisely on the same footing as chittas made by them in enquiries relating to revenue, and are equally admissible as evidence; the circumstances that the proceedings relate to a khas estate cannot deprive them of the character of public proceedings upon matters of public interest—(*Taruknath v. Mohendranath*, 13 W. R., 56; *Moocheeram v. Bisambhar*, 24 W. R., 410). Chittas and maps made in contemplation of resumption proceedings in the presence of both sides and signed by the parties are legal evidence—(*Sham Chand v. Ram Krista*, 19 W. R., 309). Chittas produced as evidence of land being māl are sufficiently attested by the deposition of the village gomasta—(*Debi Persad v. Ram Kumar*, 10 W. R., 443). Where a party putting in chittas called in a witness to attest them, but the witness did not do so, and the party did not apply to the Court to compel him to do so, the chittas were ruled to be no legal evidence, even though admitted by the lower Court without objection from the opposite party—(*Ijuttulla v. Ram Churn*, 12 W. R., 39). But where certain documents purporting to be extracted from or copies of Government measurement chittas were produced from the Collectorato, but there was nothing to show that they were the record of measurements made by any Government officer, it was held that they were not public documents within the meaning of section 74 of the Evidence Act—(*Nityanund v. Abdur Rahim*, 1. L. R., 7 Cal., 76). A map prepared by an officer of Government, while in charge of a khas mehal, Government being at the time in possession of the mehal merely as a private proprietor, is not a map purporting to have been made under the authority of Government within the meaning of s. 83 of the Indian Evidence Act, the accuracy of which is to be presumed, but such a map may be admitted as evidence under s. 13 of that Act—(*Junmejoy v. Dwarkanath*, 1. L. R., 5 Cal., 287); so under s. 13, Act I of 1827, roadcess papers are evidence *quantum valeat*—(*Daitari v. Jugobundhu*, 23 W. R. 293). But a roadcess return made by a shareholder under the schedule of Act X (B.C.) of 1871 is not admissible as evidence against another shareholder—(*Musst. Nusseeram v. Gouri Sankar*, 22 W. R., 192); section 94 of the Roadcess Act X of 1871 B.C. makes the return evidence only against the person who files it but it cannot be used in his favor. The rates therefore that are given in a roadcess return by a zemindar will not be used in his favor against the allegation of the raiyat. A zemindar may possibly, however, use the return of his predecessor for the purpose, but then also a roadcess return would be no better than a corroborative evidence, and it will be necessary to prove that rent has been collected at the rates shown there. So it has been held that collection papers are no evidence *per se*; they can only be used when they are produced by a person who has collected rent in accordance with them, and who merely uses them for the purpose of refreshing his memory, and roadcess papers are not admissible against the tenant at all—(*Mahomed Mahmood v. Safar Ali*, 1. L. R. 11 Cal., 407).

Effect of sections 42 and 43 of the Civil Procedure Code:—Under sections 42 and 43 of the Civil Procedure Code, plaintiffs must bring their entire claim and every remedy enforceable in respect of that claim into Court at once,

and if they fail to do that in any suit, they cannot afterwards avail themselves of any remedy on which they have not chosen to insist in the first suit. Suits for enhanced rent, and suits for rent, are claims arising in respect of the same subject matter, and a plaintiff cannot be allowed, after having unsuccessfully sued for rent at an enhanced rate, to sue for the original rent for previous years—(Kunnu Chunder v. Gurn Das, I. L. R., 9 Cal., 919). The plaintiff sued under the provisions of Act X of 1859 to recover arrears of rent for the years 1287-1289 (1880-1882), after having obtained a decree for the rent due for the year 1281 (1879) in a suit instituted after the rent for the year 1289 (1882) had become due. Held that the provisions of Section 43 of the Civil Procedure Code applied and that the second suit was consequently barred—(Adhinarain Kumari, Raj Rani of Burdwan v. Raghu Mahapatra, I. L. R., 12 Cal., 50; see Tarak Chandra Mukerji v. Panchu Mohini Debta, I. L. R., 6 Cal., 791; Madho Prokash Singh v. Murti Monohur, I. L. R., 5 All. 406 F. B.)

Rent free lands; onus Probandi:—See pp. 158—159 *ante*. In a suit for resumption of lands where the defendants allege that the lands are lakhmraj, the onus is on the plaintiff in the first instance, to show that the lands are mal, and if he fails to make out a *prima facie* case the suit should be dismissed—(Narendra Narain v. Bishnu Chunder, I. L. R., 12 Cal., 182.)

Double payment:—At the time when a zemindari came under the khas management of a settlement officer, arrears of rent were due by the plaintiff to the zemindar. The settlement officer issued a certificate against the plaintiff under section 19 of Bengal Act VII of 1868, requiring him to pay these arrears. The plaintiff at first objected, but subsequently withdrew his objection and paid a portion of the money into Court and presented a petition stating that the amount paid in was partly due to Government, and asking that his property might be released from attachment on payment of the balance claimed under the certificate and costs, the certificate was discharged. Held, that a suit to recover the amount paid to Government brought on the ground that the amount was really payable to the zemindar, would not lie.—*Query*—whether such a suit would lie if the plaintiff were compelled to pay again to the zemindar?—(Bepin Behari v. The Government, I. L. R., 5 Cal., 325).

65. Where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

This section is a revolution.

“We have every reason to believe that it (sale for arrears of rent) will be equally successful in the case of occupancy-holdings. Indeed, we are not without previous experience in respect of these also, many landlords of their own option and as the readiest way of getting their rent, having brought raiyati-holdings to sale in execution of decrees obtained for rent. The largest amount of rent which a landlord can sue to recover is about four years' rent. There are few occupancy-holdings in fairly populated districts which are not worth four years' rent with the costs of getting a decree for it. If the landlord has any doubt on this point, he need not allow more than a single year's rent, or even than a single quarter's rent to fall into arrear without suing for it.” (R. O. I. 58.)

The old Act :—The old section 22 of Act VIII of 1869, B.C., ran as follows :
 “When an arrear of rent remains due from any raiyat at the end of the Bengalee year or at the end of the month of Joyt of the Fuslee or Willaytee year as the case may be, such raiyat shall be liable to be ejected from the land in respect of which the arrear is due, provided that no raiyat having a right of occupancy, or holding under a potta the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of the Act.”
 And section 23 said : “When an arrear of rent shall be adjudged to be due from any farmer or other leaseholder not having a permanent or transferable interest in the land, the lease of such leaseholder shall be liable to be cancelled, and the leaseholder to be ejected, provided that no such lease shall be cancelled, nor the leaseholder ejected, otherwise than in execution of a decree or order under the provisions of this Act.” Section 52 provided : “Any person desiring to eject a raiyat or to cancel a lease on account of non-payment of arrears of rent may sue for such ejectment or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of such suits for the ejectment of a raiyat or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount, together with interest and costs of the suit, be paid into Court within 15 days from the date of the decree, execution shall be stayed ;” and section 53 prescribed : “Whenever in any suit brought by any zemindar or other person in receipt of the rent of land, to eject any cultivator, not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, the Court shall pass decree in favor of the plaintiff, no application in the form provided in section 212 of the said Act VIII of 1859 shall be necessary, but the Court shall forthwith, upon the plaintiff depositing in Court the necessary expenses, make an order for delivery of possession in execution of the decree. Provided, however, that in cases to which section 52 of this Act is applicable, no such order shall be made until after the expiration of 15 days from the date of decree.”

For decisions under the old Act, see section 66 and notes.

Change in the law :—Thus while sections 22 and 23 of the old Act contemplated suits for ejectment against *all sorts of raiyats and ordinary leaseholders* for non-payment of rent, and while section 52 gave a right to the landlord to eject *all sorts of raiyats and leaseholders* for default of rent, section 65 of this Act expressly protects *permanent tenure-holders, fixed raiyats and occupancy raiyats* from ejectment. Even non-payment of rent does not subject them to forfeiture. This is consistent with sections 10, 25 of the Act. As to non-occupancy raiyats, the old law seems to remain in tact (section 66).

Not liable to ejectment :—The Legislature here follows the decisions of the Courts. A cultivating raiyat cannot be ejected under section 52 of Act VIII of 1869 B.C. from a jote in which he has a transferable interest—(*Kristendra v. Aena Bewa*, 10 C. L. R., 399 ; *I. L. R.*, 8 Cal., 675 ; *Fakirchand v. Fowzdar Misser*, *I. L. R.*, 10 Cal., 547 ; *Tirbhobun Singh v. Jhonolal*, 18 W. R., 206).

Tenure or holding shall be liable to sale :—This section should be read with sections 159, 164, 165 and 166 *post*, and it should be noted that in all these sections what is sold is not the right title and interest of the judgment-debtor, but the tenure or holding, and what the purchaser takes is not the right and in-

terest of the judgment-debtor but the tenure subject to "protected interests and with power to cause registered and notified incumbrances." For decisions under the old law, see the following head.

Rent shall be a first charge thereon :—The object of this section is that all permanent tenures and fixed and occupancy holdings are hypothecated to the landlord for rent ; so that the tenant cannot, by disposing of the tenure to a third party, deprive the landlord of his lien upon it. Thus where the plaintiff had purchased under a Civil Court decree, the rights and interests of a tenant in a certain under-tenure or holding, and this under-tenure was afterwards brought to sale for arrears of rent by the zemindar, it was held that the purchaser under Act X sale, and not the plaintiff, was entitled to possession—(*Khoobhari v. Roghoobur*, 2 W. R., 141; *Gopal Mundle v. Subhodra Boistobee*, 5 W. R., 205; *Safurunnessa v. Saree Dhoobee*, 8 W. R., 384; see also *Ram Jeeban v. Peary Lal*, 4 W. R., Act X, 30; *Golam Chunder v. Nuddiar Chand*, 16 W. R., 1; 15 W. R., 99; 17 W. R., 452; 20 W. R., 59; *Sp. W. R.*, Act X, 48). But another decision seems contrary to these, in which Phear, J., says : "The power which a Revenue Court has in this behalf is given to it by section 105 of Act X of 1859, and we think that those provisions only enable the Revenue Court to seize and sell that which at the time is the property of the judgment-debtor. There is nothing in the whole Act as we read it to indicate that the Legislature contemplated for a moment that the property of any other person than the judgment-debtor should be sold for the debt of the latter, even though the property had previously been the property of the judgment-debtor"—(*Pran Bandhu v. Sarba Sundari*, 3 B. L. R., A. C., note 52; 10 W. R., 434). And this decision is followed in *Samiruddi v. Hurish Chunder*, 3 B. L. R., A. C., 49, where Loch, J., says : "But it was further urged that under the provisions of section 112 of Act X of 1859, the tenure of the raiyat was hypothecated for rent. This is a mistake. The produce of the land is held to be hypothecated and the zemindar, instead of bringing a suit for arrear, may recover the same by distraint and sale of the produce." (Compare also 10 W. R., 334, 446; W. R., 449; 15 W. R., 341; 17 W. R., 417; B. L. R., App., 49; 7 W. R., 183 F. B.; *Dowlatgazi v. Moonshi Munwar*, 12 B. L. R., 485 (note); *Raj Kishore v. Bulbhuddur*, S. D. A., (1859), 389; *Wahed Ali v. Sadiq Ali*, 12 B. L. R., 487, note). But it is now a settled point that the tenure passes by the sale—(*Sham Chand v. Brojo Nath*, 12 B. L. R., 484, F. B.; 21 W. R., 94). This decision is put by Chief Justice Couch upon the ground that "the holding or interest which has been created by the lease passes under such a sale; and he argues that if this is not intended, when it is said the 'tenure' is to be sold, there was no need for the provision, because the right, title and interest of the judgment-debtor could be sold under an ordinary decree." This argument will apply even to the present section of the new Act. But with due deference to the learned Chief Justice, we may venture to submit that the provisions for sale of an under-tenure for arrears of rent prescribe a different mode of sale from the ordinary process of sale in execution, and expressly give a different effect to such sale, since they entitle the purchaser to avoid incumbrances : and if the mere provision that the tenure should be sold sufficed to pass the entire interest, in whomsoever vested, as argued by the Chief Justice, there would seem to have been no necessity to provide that incumbrances might be avoided, since to use the words of the Chief Justice the "tenure" means "not the right or interest of any person in the land, but the holding which has been created by the lease." The Full Bench decision has, however, its effects upon the

Unregistered tenants.

un-registered tenants. It has been laid down that the zemindar need not look beyond his registered tenant, and in any case the sale cannot be set aside for fraud on that ground alone—(*Bhabo Tarinee v. Prosunno Mayi*, 10 W. R., 304; *Sadhun Chunder v. Gooroo Churn*, 15 W. R., 99.) A decree for rent obtained by a landlord against his registered tenant renders the tenure in respect of which it is passed liable for sale, although it may have passed into other hands than those of the judgment-debtor—(*Rashbehary v. Peary Mohan*, I. L. R., 4 Cal., 346). Where a tenure stood in the name of one of two original co-sharers, but the other co-sharer had bought all his right at a sale in execution of an ordinary decree, and thus was the owner of the whole tenure, but whose name was not registered, it was held that the tenure might be sold in a suit for eleven years' arrears against the registered tenant who admitted the claim for arrears—(*Doorga Prosad v. Sreekisto Moonshoe*, 2 Wyman's Rep., 212; Sp. W. R., Act X, 48). And similarly a sale under decree in a suit for arrears due from all the shareholders in a taluk, but to which only the registered sharers seem to have been parties, although the other sharers were aware of the pendency of the suit, was held to pass the tenure—(*Alimooddeen v. Sabir Khan*, 8 W. R., 60). In execution of a decree against one of several joint holders of a tenure when it is clear that what is sold and intended to be sold is the interest of the judgment-debtor only, the sale must be confined to that interest, although the decree-holder might have sold the whole tenure had he taken proper steps to do so, or although the purchaser may have obtained possession of the whole tenure under the sale. But if, however, it appears that the judgment-debtor has been sued as representing the ownership of the whole tenure, and that the sale, although purporting to be of the right, title and interest of the judgment-debtor only, was intended to be and in justice and equity ought to operate as a sale of the tenure, the whole tenure must be considered as having passed by the sale. If the question is doubtful on the face of the proceeding, the Court must look to the substance of the matter and not to the form or language of the proceedings. Where a judgment-debtor was alone registered in the sherista of the zemindar as owner of a tenure, but it appeared that his two brothers, who were joint in estate with him, were entitled to an equal share with him in the tenure, but that the judgment-debtor was the manager; and when it appeared that the zemindar being only entitled to a share in the zemindari had obtained a decree against the judgment-debtor alone for arrears of rent, and in execution thereof proceeded to sell his right, title and interest under section 64 of the Rent Act—it was held that as the judgment-debtor represented his brothers, and as they were equally liable to pay the amount of the decree, upon the principle set out above, the latter were not entitled to recover their share of the tenure which the auction-purchaser had obtained possession of in execution of the decree against the judgment-debtor—(*Jeolal v. Gunga Persad*, I. L. R., 10 Cal., 996). In this case the older decisions of *Doular Chand v. Lalla Chabeel Chand*, L. R., 6 I. A., 47 and *Bissessur Lal v. Maharajah Luchmessur*, L. R., 6 I. A., 233, were commented upon. The plaintiff purchased in a private conveyance from the registered tenant of a permanent transferable interest in land such as is described in section 26 of Act VIII of 1869 (B.C.), but no notice of the transfer was given to the zemindar. The zemindar subsequently brought a suit against the tenant for arrears of rent and obtained a decree, in execution of which he caused the tenure to be sold and himself became the purchaser. The plaintiff took proceedings under section 311 of the Civil Procedure Code to set aside the sale, but his application was rejected on the ground, an erroneous one, that he was not a proper party to take such proceeding, and he did not appeal against the order rejecting it. It was held in

a suit brought against the zemindar and the tenant to set aside sale, that in the absence of fraud the suit was not maintainable. The plaintiff might have satisfied the rent decree, and so prevented the sale, or he might have appealed against the order rejecting his application to set it aside. But having done neither, and the zemindar having had no notice of the transfer, the plaintiff was not entitled to treat the proceedings in the rent suit as a nullity on the ground that he was not a party to it—(*Panyo Chunder v. Hurq Chunder*, I. L. R., 10 Cal., 496). A decree for arrears of rent of an under-tenure was obtained against a tenant who became an insolvent, and whose tenure became vested in the Official Assignee by virtue of the provision of the Indian Insolvent Act, 11 and 12 Vict., C. 21. An application was made under sections 59 and 60 of the Rent Law, Bengal Act VIII of 1869, for an order that the tenure should be sold for its own arrears. The Official Assignee objected to the sale, and contended that the decree-holder's only right was to prove in the insolvency for the amount of his debt. It was held that, whether the arrears of rent became due before or after the insolvency of the judgment-debtor, the decree-holder was entitled to sell the tenure in execution of his decree—(*Chunder Narain v. Kishen Chand*, I. L. R., 9 Cal., 855.) In a case the plaintiff had obtained a decree for possession of a taluk, but while the decree was under appeal the zemindar sued the registered tenant for arrears up to a period subsequent to such decree: a sezawal was put in possession of the taluk, and a sale decreed in the rent suit; and the plaintiff did not get himself registered, or tender to stay the sale, or apply for the removal of the sezawal: under these circumstances it was held that the plaintiff would not set aside the sale, and that the whole tenure passed, there being the necessary provision to that effect in the lease—(*Forbes v. Protap*, 7 W. R., 409). But where a transfer of a tenure has been recognized "the zemindar cannot sell for arrears in a suit against the registered holder—(*Umurt Lal v. Soorub Dasi*, 2 W. R., Act X, 86; *Samiraddi Khalifa v. Harish Chandra*, 3 B. L. R., A. C., 49; *Pran Bundhu v. Sarba Sundari*, Ib., 52 note; *Meah Jan v. Karuna Mayi*, 8 B. L. R., 1; *Ram Buksh v. Hridoy Mani*, Ib., 10 note; *Mojon v. Dula Gazi*, 12 B. L. R., 492, note; *Ram Kishore v. Kristamonee*, 23 W. R., 106).

Compare also (*Krista Chunder v. Raj Krista*, I. L. R., 12 Cal., 24.)

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fasi or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrears of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(3) The Court may for special reasons extend the period of fifteen days mentioned in this section.

This section should be read with sections 89 and 156 of the Act.

Read the notes under section 44 under the heading of *Fractional owners*, p. 195.

Old Act :—See sections 22, 23 and 52 of Act VIII of 1869 B.C., quoted under section 65.

Due by a tenant :—A suit for ejectment will lie under this section for arrears of rent a bhaoli tenuro. But a suit which is in reality a claim for compensation for use and occupation of lands, cannot be described as a suit for arrear of rent under section 52 of the Bengal Act VIII of 1869—(*Kishen Gopal v. Barnes*, I. L. R., 2 Cal., 374). The definitions of 'tenant' and 'raiya' under this Act are clear, and 'rent' means rent in kind or money.

At the end of the year :—A raiya cannot be ejected under this section, for an instalment of rent which falls due in the middle of the year. The right to eject for non-payment accrues only when an arrear remains due at the end of the Bengali year or at the end of the month of Joyt of the Fuslee or Willaytee year, as the case may be—(*Savi v. Chand Sarkar*, Marsh., 384; *Sreeram v. Juggernath*, 1 Ind. Jur., 187; 5 W. R., Act X, 45). A landlord who sues for arrears of rent, for the whole of one year and a portion of the next, and also for ejectment, is not entitled to a decree for the latter. The right to ejectment under s. 22 of the Rent Act (Beng. Act VIII of 1869) accrues at the end of the year, and forfeiture or determination of the tenancy thereupon takes place, but if the landlord sues for subsequent arrears, he treats the defendant as his tenant, and the right acquired under that section must be taken to have been waived.—(*Jogeshari Chowdrain v. Mahomed Ibrahim*, I. L. R., 14 Cal., 33). And under no circumstances can a landlord who has received the rent of a subsequent year, eject a raiya on the ground that the rent of the previous year is due—(*Sheik Peer Bux v. Mouzah Ally*, Marsh., 25; 1 Hay, 89). "The receipt of rent," observed the Chief Justice in this case, "had the same effect as if the plaintiff had at the commencement of 1268 created a new tenancy. If he had done so, it is clear that the defendant could not be ejected for non-payment of rent for 1267. So, if the plaintiff had obtained judgment in this suit to oust the defendant for non-payment of rent for 1267, and had afterwards, instead of executing the judgment, allowed the defendant to continue in possession, and pay rent for 1268, it would have been a bar to his afterwards executing the judgment." Receipt of rent subsequent to a decree for ejectment under this section from a tenant against whom the decree was passed renders the execution of the decree impossible—(*Nubo Kishen v. Hurish Chunder*, 7 W. R., 142). As to forfeiture for non-payment of rent see sections 43, 25 and 20 *ante*. But the receipt of rent is not *per se* a waiver of every previous forfeiture; it is only evidence of a waiver—(*Chundernath v. Sirdir Khan*, 18 W. R., 218).

Who are protected ?—As to forfeiture for non-payment of rent, see sections 43, 25 and 10 *ante*. Only permanent tenure-holders, fixed raiyas and occupancy-raiyas are protected under this section. The penal provisions apply to all other tenants, raiyas or under-raiyas, tenure-holders, or farmers. It has, however, been held that section 52 of Bengal Rent Act was applicable both to cases where the right to cancel a lease arises under the provisions of the Act

and to cases where the right arises under agreement between the parties. But the object of the section being to prevent a forfeiture if the rent be paid within the time specified by the section, the Court will grant relief against a forfeiture where the rent is so paid—(*Dulichand v. Rajkissore*, 1 L. R., 9 Cal., 88; 11 C. L. R., 389). The same principle was applied on the equitable ground to a mukurari lease where the covenant was that default of payment of rent will cause forfeiture—(*Mahomed Ameer v. Peryag*, 1 L. R., 7 Cal., 566; *Duli Chand v. Meher Chand*, 12 P. L. R., 439; *Mothura Mohun v. Ram Lal*, 4 C. L. R., 469; compare also *Brojendra Kumar v. Bungo Chunder*, 12 C. L. R., 389; *Golabalee v. Kootobollah*, 1 L. R., 4 Cal., 527; compare 19 W. R., 349; 22 W. R., 376).

But as the Act is intended only for agricultural lands and for the protection of peasants, a suit for ejectment from land assigned for building purposes brought upon a contract will not possibly lie under this section—(*Ramuarnin v. Nobin Chunder*, 18 W. R., 205; see also in the matter of *Brohmomayi Bawa*, 9 B. L. R., note, 109; 14 W. R., 10). The word used in the section is 'tenant,' and the definition of 'tenant' does not exclude tenants of homestead land or of land used for manufactories. The word 'land' is not defined in this Act. Taking its definition from Act V of 1867, B.C., or Act X of 1871, B.C. or Act IX of 1880, it appears that this section will apply to tenants of houses, buildings, and other tenements, even if there be no contract prescribing forfeiture for non-payment of rent. The effect of such a proposition might be that if you take a house for six months and default to pay rent, the whole agreement may be rendered void by a suit of ejectment. But the definition of the word 'tenant,' read with section 4, will show that a tenant is either tenure-holder, or raiyat, or under-raiyat. A tenure-holder is a rent receiver and the latter two are agriculturalists. Therefore the tenant of a house would fall under neither of these classes. See the Collector of Monghyr v. Hakim Madar Buksh, 25 W. R. 136.

Obtained a decree or not.—The landlord may either claim arrears of rent and ejectment in the same suit or if he has got a decree for arrears of rent, when he did not claim ejectment, may sue only for ejectment and put in the decree for arrears of rent, if unsatisfied, as evidence (*Sheikh Mahamad Hossein v. Boodhan Sing*, 7 W. R., 374; *Sheikh Abdul Rahman v. Digambari Dasi*, 18 W. R., 477).

Entitled by contract or not.—The liability to ejectment under this sub-section is independent of any contract between the parties, and is an incident of all tenancies.

The decree what to contain?—It is absolutely necessary that the decree shall specify the amount of arrears, and if it fails to do so, it ought to be set aside—(*Shah Ali Hossein v. Nundu Khan*, 2 All., 62.)

Paid into Court.—The letter of the law does not assert that the arrear be in saving a forfeiture and not by his transferee or by any other party interested paid in by the tenant of the tenure.

A third party may also pay the amount—(*Saroda Prosad v. Nobin Chunder*, Marsh., 417, 2 Hay 527; or an under-tenant—*Indur Prosad v. Campbell*, 1 L. R., 7 Cal.; see section 172 post.)

But in a suit for ejectment under section Act X of 1859, against A on the ground that A is not a sufficient ground of non-payment of rent, B has no right to intervene and be made a defendant on the allegation that he is really tenant of the land in question—(2 Hay, 452; Marsh., 374; 6 W. R., Act X, 51.) Payment into Court by a judgment-debtor within fifteen days from

the date of decree of rent, interest, and costs, with a protest as to the sum improperly charged against him as interest, is a sufficient payment within the meaning of this section to save him from liability to be ejected from his tenure. There is no analogy between deposits made to prevent the sale of mortgaged property and payments made under the provision of this section—(*Srishtidhur v. Doorga Narain*, 17 W. R., 462). Where in a suit for rent of the current year and for ejectment, supported by a previous unsatisfied decree, a decree was passed for the rent of the current year without including the amount claimed under the previous unsatisfied decree, it was held, that the defendant, having paid the amount of the arrears specified in the decree had saved himself from ejectment—(*Savi v. Mohesh Chunder*, Sp. W. R., Act X 29). When the money is brought into Court on the fifteenth day or the next opening day, but it is not received by the Court, because according to some departmental rules the money is to be paid into the Treasury and the tenant uses diligence to comply with such rules and pays the money into the Treasury on a subsequent date, he makes a sufficient compliance with the decree (*Gujadhar Pauree v. Naik Pauree*, I. L. R., 8 Cal., 528).

Fifteen days from the date of decree :—Under this section a decree for ejectment must be conditional on the defendant not paying the decreed rent within 15 days—(*Landa v. Binodelal*, 6 W. R., Act X, 37; *Kadir Gazeer v. Mohadevi Dasi*, *Id.*, 48; *Buksh Ali v. Ramtana Gui*, *Id.*, 64). In the matter of *Sheik Gunee v. Baharoollah*, 13 W. R., 240, it was held that where the plaintiff sued for arrears of rent praying that if they were not paid, the defendant should be ejected, and the Deputy Collector gave him a decree setting forth that the prayer was for a proceeding under section 78, Act X of 1859, and ordering that there should be such a proceeding to execute, the order was an order for ejectment. Where a decree is appealed against, the time

Time of grace from what period to run ? of grace shall commence from the date of the decree of the Appellate Court. For, in order to save a holding, the defendant must not only deposit the costs of the first Court, but also those of the Appellate Court—(*Nobo Kishto v. Ramessur*, 2 Wyman's Reports, 75; 18 W. R., 412 note; *Sheik Abdool Rahman v. Digumbari Dasi*, 18 W. R., 477; *Rao Banceram Nadian of Rao Madhubram (minor) v. Ram Nath Shaha*, 10 B. L. R., Ap. 2). If the decree is altered or amended on review or appeal, the fifteen days' grace dates from the final decree in the case—(*Radha Mohun v. Bukshee Bogum*, Marsh., 471; 18 L. R., 477; *Noorali v. Kond Mean*, I. L. R., 13 Cal., 13); and the day on which the decree was passed should be excluded from computation—(*Shoopalal Sing v. Nubi Ashruf Khan*, 3 All., 342). Where however the decree was not modified in review, it was held that the time should run from the original decree—(*Pareesh Nath v. Kristo Lal* 23 W. R., 50). When a tenant has been sued for arrears of rent and a decree obtained against him under Bengal Act VIII of 1869, section 52, which provides for the stay of execution if the amount of arrears together with interest and cost of suit be paid into Court within fifteen days from the

Closed holiday. date of the decree, and the Court is closed on or before the first day of the period so limited, the tenant is at liberty to pay into Court the arrears, interest and costs on the first day that the Court re-opens; and if he does so, execution must be stayed—(*Hossein Ali v. Donzelle*, I. L. R., 5 Cal., 906.)

Power to extend the time of grace :—A Court has power to extend the period of grace and to stay the execution of a decree for a longer period than fifteen days, but not to shorten the period. This discretionary power is also

vested in the Appellate Court—(*Nobokisto Mukerji v. Ramessur Gupta*, 18 W. R., 412 (note); 2 Wyman Act X, 75; *Rao Baneram v. Ramnath Shaha*, 10 B. L. R., App., 2; 18 W. R., 412; *Sheik Abdur Rahman v. Digumbari Dast*, 18 W. R., 477). The Court may extend the time only at the time of passing the decree, but not in the course of execution. The section evidently contemplates the procedure before the decree. So it has been held that the Court, whose duty it is to execute a decree, is bound to execute it in the shape in which the decree comes before it, and has no authority to permanently stay the execution of any portion thereof, *e. g.*, where a decree is for money and for ejectment in the event of non-payment within fifteen days, the Court executing is not competent to extend the period for payment in order to save the judgment-debtor from the alternative consequence—(*Sankur Singh v. Huree Mohan*, 22 W. R., 460; *Gokhlanund v. Laljee Sahoo*, 21 W. R., 11; *Pureshnath v. Kristolal*, 23 W. R., 50).

Appeals from such decrees:—Under the old law there have been conflicting decisions on this point. In *Parbutichurun Sen v.*

Appeals.

Shaik Mondari, 1. L. R., 5 Cal., 594, 5 C. L. R., 513, it has been held that an appeal does not lie to the High Court from a decision of the District Judge, staying execution in a suit for arrears of rent and for ejectment where the value of the amount decreed is less than Rs. 100. Nor can an application, made to eject the tenant on his default to pay into Court the money due under the decree within the time fixed by section 52 of Bengal Act VIII of 1869, confer such right of appeal. In suits instituted under Bengal Act I of 1879, for arrears of rent and ejectment on account of the non-payment of arrears of rent, a second appeal lies to the High Court, this class of cases not being within the provision of section 137 of the same Act—(*Ramjan Khan v. Raman Chamar*, 1. L. R., 10 Cal., 89). The decision of *Parbutichurun Sen v. Shaik Mondari* has been overruled in the Full Bench decision of *Tulsi Panday v. Lala Bachalal*, 12 C. L. R., 223. The judgment of the Full Bench was as follows: "*Primâ facie* in a suit of this kind the appellant is entitled to a second appeal. The question is whether that right is taken away by section 102 of Act VIII (B.C.) of 1869? That section only applies where the amount sued for, or the value of the property claimed, does not exceed Rs. 100; and unless that fact does appear either from the finding of the lower Court, or elsewhere upon the proceedings, it seems to us that we have no right, (more specially as we are only empowered here to deal with points of law), to draw any inference to that effect. We are therefore, of opinion, that this Court has jurisdiction to entertain the appeal."

67. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit.

Interest on arrears.

Shall bear:—The original section 21 of Act VIII of 1869 (B.C.) said: "Unless otherwise provided by written agreement (instalment of rent) shall be liable to interest at twelve per centum per annum." The old law has been expressly overruled by the present section which ought to be read with clause (h) of sub-section (3) of section 178. So that under the present law no contract for a higher or lower interest than twelve per cent. will

Change of law.

annum." The old law

No agreement about interest valid.

be valid, and it is no longer in the discretion of the Courts to adjudge a lower interest than twelve per cent., for the section says *shall* bear simple interest. No compound interest is recoverable. The following decisions under the old law which laid down that the Court has a discretionary power of awarding interest or not and which were based upon the words *liable* to interest are therefore to be considered as overruled—(Beck-ith v. Kristo Jeebun, Marsh., 278; Kashinath v. Mynuddin, 1 W. R., 154; Rajah Satyanand v. Zahir, 6 B. L. R., App., 119; Maharajah Dhoraj Mahtab Chand v. Sreemati Dev Kumari, 7 B. L. R., App., 26; Radhika Prosunno v. Urjoon, 20 W. R., 128; Maharani Indra Jeet v. Khajeh Abdul Hossein, 2 Board's Rep., 210; Musst. Bibi Faseehun v. Musst. Ashrufunissa *alias* Awanee). Every arrear of rent, unless it is otherwise provided by an agreement in writing, is liable to bear interest at 12 per cent. from the time when it, or each instalment of it, became due? The discretion which a Court has to refuse interest can only be exercised upon very clear ground. The mere non-enforcement by a landlord, even for a series of years, of his right to interest upon arrears of rent, does not amount to a waiver of such right—(Johoorly Lall v. Bullab Lall, 1 L. R., 5 Cal., 102).

When damages are awarded, no interest can be allowed; see the proviso of the next section. When therefore the Courts would like to reduce the rate of interest or to enhance it, they may allow damage instead of interest, and as to the amount of the damage it is in the discretion of the Court to vary it within the limit of twenty-five per cent. Interest can under no circumstances be awarded where the plaintiff has obtained damages under section 68; for such damages are given in lieu of interest and can only be decreed in addition to rents and costs—(Nobo Kanta v. Raja Barada Kanta, 1 W. R., 100).

In a suit to recover arrears of rent at enhanced rates, that is, where the rates are to be fixed by a Court of Justice, the plaintiff is not entitled to interest on the ground that the raiyat did not pay the enhanced rates demanded by the plaintiff—(Golamali v. Gopal Lal, 1 W. R., 56; Sameera Khatoun v. Gopal Lal, 1 W. R., 58); so while a suit for enhancement is pending, the defendant is not liable for interest, inasmuch as the rent is undetermined; but after the rent is determined he is liable to pay interest on all arrears from and all instalments after that date—(Raj Mohan v. Anand Chunder, 10 W. R., 166). In a suit in which decree is given for arrears of rent at an enhanced rate, interest is to be allowed not only from the date of the decree, but from the time the rent became due—(Khajeh Ahsanollah v. Kajee Aftabuddin, 1 L. R., 4 Cal., 594; 3 C. L. R., 382). Interest may be decreed with arrears of rent, but it should not upon instalment as from dates during the currency of the year, unless the parties had agreed that the rent should be paid by instalments at those dates—(Bharat Chunder v. Bipin Bihari, 9 W. R., 495; Bhryub Chunder v. Meer Ameeruddin, 17 W. R., 173.) These decisions are now ineffective, because the wordings of the section imply that

Where interest should not be allowed. interest on instalments will run. Where a kabulyiat stipulates for the payment of interest upon all sums not paid on a fixed date but the landlord accepts sums due on account of principal on successive dates, from time to time for a series of ten years, without making any demand for interest, and without applying any of the sums paid to the discharge of an interest, the Court is not in error in holding that the landlord has waived his claim to interest—(Dindoyal v. Frankishen, 2 Hay, 423; Marsh., 394). The omission to claim interest on arrears of rent in past years, is not to be considered a waiver of the right to claim interest for all time—(Johoorly Lall v.

Waiver of interest. interest on instalments will run. Where a kabulyiat stipulates for the payment of interest upon all sums not paid on a fixed date but the landlord accepts sums due on account of principal on successive dates, from time to time for a series of ten years, without making any demand for interest, and without applying any of the sums paid to the discharge of an interest, the Court is not in error in holding that the landlord has waived his claim to interest—(Dindoyal v. Frankishen, 2 Hay, 423; Marsh., 394). The omission to claim interest on arrears of rent in past years, is not to be considered a waiver of the right to claim interest for all time—(Johoorly Lall v.

Bulluv Lal, 4 C. L. R., 349; I. L. R., 5 Cal., 102). In distinguishing this case from that of *Dindoyal*, Mr. Justice Jackson observed: "It seems quite clear that the present case is distinguishable from that case. The Judge here does not find that the plaintiff had waived his claim to interest * * * There is a case cited in Master's Edition of the Law of Landlord and Tenant—*Ruttykunt Bose v. Gungadnur Biswas* (Marshall, 40)—holding that the mere fact that the landlord did not, on breach of covenant, claim interest, instalment by instalment, for the fractional time that the rent was not paid when due, does not justify the plea that such interest, so stipulated for, is not due; nor does it raise the presumption that plaintiff had waived his claim to interest. I think that it would be monstrous to say that the mere omission to claim interest for past years from a tenant who did not pay his rent on due dates should be considered a waiver of the right to claim interest for all time."

It is doubtful if interest will now be recoverable upon monthly instalments. But if the agreement was entered into before this Act came into force, it will operate. See clause (h) of sub-section (3) of section 178. Under the old law it was held that in a suit for rent where the *kabuliyat* stipulated that payment should be made in monthly *kists*, the *raiyyat* was held to be bound by its terms, notwithstanding that the landlord had not strictly enforced them previously—(*Peary Mohun v. Brojo Mohun*, 21 W. R., 36; *Peary Mohan v. Brojomohun*, 22 W. R., 428).

68. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

Provided that interest shall not be decreed when damages are awarded under this section.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

Changes of law:—This section has been substituted for sections 44 and 45 of Act VIII of 1869 B.C. (sections 2 and 3 of Act VI of 1862 B.C.), with the provisions of tender and interest struck off and with the proviso inserted. The words "and that he has not before the institution of the suit tendered such amount to the plaintiff or his only authorized agent, or in case of the refusal of the plaintiff or such agent to receive the amount tendered, has not deposited such amount in the Court before the institution of the suit in manner hereinafter mentioned," are omitted after the words "due by him" in sub-section (1): so also the words, "these damages, if awarded as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of 12 per cent. per annum

from the date of decree until payment thereof." Similarly, in sub-section (2), the words "or that the defendant had before the institution of the suit duly deposited in the Court, in the manner hereinafter mentioned, the full amount which the Court shall find to have been due to the plaintiff at the date of such deposit" which occurred in the old section after the words "provable cause" have been omitted, and also the words "such sum with interest at the rate of 12 per cent. per annum until payment thereof, shall be recoverable from the plaintiff in like manner as sums ordered to be paid by decrees of such Court," which occurred at the end of the section. The proviso of sub-section (1) is new.

Without reasonable or probable cause:—The damages are awardable under this section only when the Court specially finds that the defendant has without reasonable or probable cause neglected or refused to pay the amount due by him. It has been held that the mere pendency of an enhancement suit cannot of itself be an excuse for withholding from paying what is admittedly due, *viz.*, the old rent. The damages under this section are awardable in addition only to *rent and costs*, and are to be regarded as in substitution for and not in addition to, the interest awardable under section 21 of this Act—(*Nobo Kant Dey v. Raja Boroda Kant*, 1 W. R., 100.)

A man is not liable to damages, merely because he may from poverty, illness or some other unavoidable cause, have failed to pay his rent—(*Huro Mohan v. Umesh Chunder* 1 R. J. P. J., 117).

The Court may award:—The power to award damages on arrears of rent is within the discretion of the Court—(*Zameeruddinessa Khanum v. Clement Phillippe*, 1 W. R., 290). "The award of additional damages," observed Trevor, J., "is discretionary and not imperative on the Courts, and before awarding these damages the Court, in the exercise of its discretion, must look to the condition of the parties, and the particular hardship inflicted on the landlord by the omission of the under-tenant to pay his rents, before it will call into action the penal terms of this section"—(*Ram Bodhun v. Rani Sree Konowar*, Sp. W. R., Act X, 22). As it is clearly discretionary to award such damages, the refusal to award them is not a ground for special appeal—(*Maharajah Dhoeraj Mahtab Chand Bahadur v. Debendranath Thakoor*, Sp. W. R., Act X, 68; *Gopal Lal v. Mahomed Kadir*, *id.*, 73).

Proviso:—See *Nobokanto v. Raja Boroda Kanta*, 1 W. R., 100.

Penalty of the landlord:—The Act has substituted the word 'damages' for 'compensation' which occurred in the old law. Before imposing a penalty as prescribed by this section, the Court should carefully weigh the evidence, and assign reasons why it thinks that arrears are not due, and that the plaintiff has instituted the suit against the defendant without reasonable or probable cause. An Appellate Court has authority to award damages under this section if it finds, after considering the whole evidence, that there are no grounds whatever for plaintiff's case—(*Ram Chunder v. Dagor Khan*, 10 W. R., 339).

Interest on cesses:—Damage and interest are recoverable upon road-cess and public-cess also. Section 47 of Act IX of 1880 B.C. (25 of Act X of 1871) prescribed that the road-cess is recoverable in the same manner and under the same penalties as if the same were arrears of rent; see also section 3 (5) of this Act, where rent is defined to include cesses for the purposes of sections 53-68.

Produce-rents.

"Raiyati tenures in Behar are classified on various principles. One classification is made with reference to the length of the raiyati holdings; another

with reference to the incident of the place of residence of the raiyats, and a third with reference to the mode of payment of rent. Under the last method all raiyati holdings are divided into two classes, viz., Nukdi and Bhaoli. When the payment of rent is made in cash, the tenure is called Nukdi (from *nukdi*, cash). When the payment is made in kind the tenure is called Bhaoli (probably a Hindi compound made up of *bhow*, rate, price and *wali*, pertaining to). The Nukdi tenures are of several classes known by distinct names; the most important of them being Nukdi proper, Balkut and Husthood. The tenure is called Nukdi proper or Chikkut when the cash rent fixed previously is paid for every bigha of the holding without any regard to the produce. The Balkut (from *bal*, ears of corn, and *katna* to cut) is the kind of tenure where the rate of cash rent per bigha is determined on an inspection of the actual produce of the fields, and this rate charged for every bigha of the raiyat's holding. The Husthood is the kind of tenure when the rate of rent is fixed previously; but the raiyats are liable to pay rent at that rate for those plots of land only where the harvests grow. Thus if a raiyat holds twenty bighas of land, and the tenure is Nukdi, the amount of rent, the rate of which must in this case have been fixed previously, say rupees 5 per bigha, would be 100 rupees; but if the raiyat held the same quantity of land in Balkut tenure, the rate of rent would be determined only after an inspection of the actual produce of any one harvest, and supposing the rate then to be determined at Rs. 6 per bigha in one year the amount of rent would be Rs. 120, and supposing the rate to be determined at Rs. 4 the next year, the amount would be Rs. 80. And if the rate of rent be at 5 rupees per bigha, and Khariff has grown in 8 out of 20 bighas, and Rabbi in 4 out of 20, the amount of rent payable, in case the tenure is Husthood, would be Rs. 65, and if in another year, Khariff grows in 12 bighas and Rabbi in 13, the amount of rent payable is Rs. 120, and this irrespective of the amount of produce. There is another kind of Husthood tenure which is peculiar to certain pergunnas, and in this there is a combination of the two kinds of payment. Thus a Nukdi rental is previously agreed on, and it is understood that a certain percentage of the raiyat's holding is to be held in Nukdi, and the remainder in Bhaoli Agorbatai. The raiyat has in this case the right to select the best lands called Joiet (best) for the Nukdi payment. Except the Nukdi proper, the other modes of Nukdi payment are sometimes reckoned as Bhaoli.

"The Bhaoli tenure is of two kinds: (1) Agorbatai, (2) Danabandi. Agorbatai (from *agora*, watching, and *batna*, dividing) is that kind of Bhaoli tenure where a division of the crops is made in predetermined proportions between the landlord and the tenant. When the crops are yet in the field and ready for reaping, the landlord appoints *agoras* (watchmen) to watch that none of the crops are fraudulently made away with. When ripe, the crops are gathered in the *khalihans* (threshing-floors) which are places usually set apart for this purpose near the basti. The charge of reaping, (one out of twenty-one bundles gathered) is paid out of the entire produce, and the remainder then, after threshing and cleansing, is divided in predetermined proportions between the landlord and the tenant. The usual proportion is half and half; or 9 annas to the landlord and 7 annas to the tenant out of the 16 annas' produce. The Danabandi literally means a cursory survey or a partial measurement of field, or weighing of the crop, to ascertain the value of the crop and the amount of assessment. These proceedings, which are antecedent to the final determination of the landlord's portion, give the name to the tenure itself. The Danabandi is made when the crops are yet standing in the fields and when they are almost ripe for cutting. A party consisting of a *salis* (arbitrator), an *amin* (appraiser), attended by the *patwari*, *gomashtha* and other village *amlas*, go about in each field and appraise

the produce in maunds. At first the *salis* makes the estimate, but if the *raiayat* is dissatisfied with the estimate, the *Amin* is referred to. The estimate having been once made, everything is left to the *raiayat* himself; the landlord or his *amla* has then nothing to do with the standing crops. They are reaped and gathered by the *raiayat* who may pay the *zemindary* portion of the estimated produce either in kind, or the price of this according to the price current, in cash. The *zemindar's* share is usually either half or 9 annas out of the 16 annas of the produce. The *Baitadana* is merely a modification of the last mentioned method, the difference being that under this system the *salis* and the *amin* do not go to the field to appraise the out-turn, but the landlord's *amla* and the *raiayat* come to an understanding about this at a sitting in the *zemindar's* *kutchery*.

"There is a kind of *Danabundi* which is called either *Khara* or *Baita-Danabundi*, where the estimate is made in the *zemindar's* *kutchery* without going to the field."—(*The Memorial of the Behar Landholder's Association*.)

"Under the *Agorebatai* system, the landlord employs men to watch his share of the crop when it approaches maturity and when it is ready, cuts and carries it himself. In a more common variety of the same tenure, the crop is cut and threshed by the *raiayat* under the superintendence of the *zemindar's* servants, and the produce divided on the threshing-floor; but it is also matter of arrangement between the parties in this case, whether the landlord shall have straw or only the grain, and whether it shall be delivered at the threshing-floor of the *raiayats'* village or at some other place more convenient to the *zemindar*. Under the *Bhaoli* or *Danabundi* system, when the crop is ripe, the *patwari*, the *gumashta*, the *amcen*, or *jureebkush* or measurer, a *salis* or arbitrator, and a *navisunda* or writer, of the village, with the *raiayat* himself proceed to the field in which the crop is growing. The *salis* first makes an estimate of the produce, the *amin* then makes another. If the two estimates agree, the matter is considered settled. If they differ, the *raiayat* cuts a cotta where the crop is thinnest; the *zemindar's* people cut another where it is heaviest. The produce is threshed out, mixed together and weighed, and the produce of the whole field is estimated from this sample. A memorandum of the result, called a *Danabandi*, is made out by the *patwari* and his writer, and signed by those present. The *raiayat* is then at liberty to cut and store his grain. The *putwari* next prepares a paper called a '*Behree*' showing the amount of grain in the possession of the *raiayat*, and the respective shares of the *malik* and the *raiayat*, and sends for the *malik's* share, which the *raiayat* either pays in grain or money, as may have been agreed upon. If the agreement is to pay in money, the *gumashta* writes to the *amla* of the surrounding villages for the *nirik* or the market rate, which is returned on the back of his letter, and an average is then struck. It will thus be seen that accounts of the estimate of the crop and its weighment form the chief evidence in these *Bhaoli* cases, and that a *juma-wasil* account is of comparatively little use.—(*Letter of the Commissioner of Patna to the Secretary of the Board of Revenue, No. 1130 of the 21st August 1858.*)

"When the tenure is *bhaoli*, that is when the rent is paid in kind, the tenant receives no *potta*, but may be ejected after any harvest. *Bhaoli* tenure is either *danabandi* or *agorebatai*. In both cases the Collector and the proprietor theoretically share the produce in equal moieties; but in neither case does the cultivator really obtain more than one-third of the crop, while sometimes his share is even less than this. When the tenure is *danabandi*, the crops are assessed just before they come to maturity by the *gomashta* or *amin*, assisted by the village accountant (*patwari*), and the bailiff (*barahil*). The cultivator suffers from the corruptness of these agents, who either over-estimate the probable out-turn, or else demand heavy bribes for making a fair estimate. Supposing the

real out-turn to be sixteen *maunds*, the estimate will make it eighteen. The landlord will then get *nine maunds* as his half, and another *maund* on some pretext or other. The cultivator will thus be left with six *maunds*; but out of this he will have to fee the *gomashia*, the *patwari*, the *barakil* &c., with fixed percentage of his share, till finally, he may think himself fortunate if he carries off five of the sixteen *maunds* as his own half of the produce. When the tenure is *agorebatai*, the cultivator fares perhaps a little better. The actual out-turns of the crops is divided; and though the cultivator has to give the usual fees (*abwabs*) to the landowner and his agents still he gets a larger share of the produce." (*Dr. Hunter's Statistical Accounts of Patna*, pp. 126-127).

Mr. Edward Colebrooke, writing in 1819 and epitomizing the reports of 14 Collectors in the North-Western Provinces, says: "It will appear that for the most valuable articles of culture in all the districts and for every sort of produce in some districts money rents obtain universally, and that the tenures in kind under the several denominations of *Umli*, *Bhaoli*, and *Battai* prevail only for the inferior sorts of grain, and in those districts or those particular *parganas*, where, from the nature of the soil, the want of means for artificial irrigation, and the consequent dependence on the uncertainty of seasons, the tenants are not disposed to subject themselves to a certain payment. * * * The proportion of the crop whether taken by the landholders in kind or commuted for its value in money, is regulated by custom which varies according to the nature of the soil from one-fourth and less in lands newly reclaimed to one-half in lands under full cultivation. * * * With regard to the *nukdi* tenures or money rents they are found to be regulated in only few parts these provinces by established *pargana* rates. In general they appear to be annually adjusted by mutual agreement. The tenants themselves are stated to be averse from binding themselves to a fixed payment beyond the current year in consequence of the uncertainty of the seasons."—(*Letter to Governor-General, dated the 5th January 1819*). In the *Rai-raiyans*' answers (*Appendix No. 17 to Mr. Shore's Minute*), it is stated that in the *Subah* of Bengal, the *raiya*t always paid their rent in money—that the crop of *khamar* land is usually divided between the *zemindars* and *raiya*t in equal proportion, though in some places the latter get more and in other less: but for this fluctuation there is no specific rule; that in the *Subah* of Behar custom has established the share of the *zemindar* at $22\frac{1}{2}$ *soers*; and that of the *raiya*t at $17\frac{1}{2}$; but variation from these proportions occasionally occur. Even when rents were agreed to be paid in kind, it was very common for the *zemindars* to commute his share for a money payment, the commutation price being adjusted while the crops were still on the ground—(*Mr. Holt Mackenzie's Minute, section 428*). The North-Western Provinces' Land Revenue, Act XIX of 1873, empowers settlement officers to commute these rents for a fixed money rent (sections 73-74). The Oudh Rent Act XIX of 1868 contains similar provisions (section 28). *Vide* section 40 of this Act.

69. (1) Where rent is taken by appraisement or division of the produce,—

Order for appraising
or dividing produce.

- (a) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or
 - (b) if there is a dispute about the quantity, value or division of the produce,
- the Collector may, on the application of either party and on

his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where in the opinion of the District or Sub-divisional Magistrate the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected.

The Collector :—See the definition of Collector in clause (16) of section 3. He must be either the Collector of the district or an officer empowered under this section to discharge the function of a Collector.

“Under the authority vested in him by Chapter I, section 3 (16) of the Bengal Tenancy Act, VIII of 1885, the Lieutenant-Governor has been pleased to invest all officers in charge of sub-divisions with the powers of a Collector for the purpose of discharging the functions referred to in sections 69 to 71 of the Bengal Tenancy Act.” (*Notification of the Government of Bengal of the 21st April, 1886.*)—“Under the authority vested in him, by Chapter I, section 3 (16) of the Bengal Tenancy Act of 1885, the Lieutenant-Governor is pleased to invest the Deputy Collector of Howrah with the powers of a Collector for the purpose of discharging the functions referred to in sections 69-71 of the Bengal Tenancy Act.”—(*Notification, dated the 28th May, 1886.*)

Appointment of officer to appraise or divide :—An appraisement or division by an Amin or police functionaries is likely to create mischief. The Collector ought therefore to depute a Sub-Deputy Collector for the duty.

Likely to prevent a breach of the Peace :—The grounds for the belief of the Sub-divisional Magistrate as to the existence of a likelihood of a breach of the peace must be recorded.—*In the matter of the petition of Kunundnarrain Bhoop*, I. L. R., 4 Cal., 650.

70. (1) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex-parte*.

Procedure where officer appointed.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

"We have empowered the Collector, in all cases, to pass such order as he thinks just on the report of the officer deputed, and have provided that his order shall be final and be enforceable as a decree, unless he thinks fit to refer any question in dispute between the parties for the decision of a Civil Court. This seems to us a simpler and more convenient procedure, than leaving the parties to seek redress in the Civil Court, *in the first instance*, as under the original Bill." (R. S. C., III.)

Assessors :—The association of assessors is in accordance with the indigent custom of the country under the *Danabundi* system. See *ante*, pp. 293-295.

Sub-section (5):—The procedure is meant to be summary and is therefore open to a regular suit in Civil Court. 'Final' possibly means *not appealable*. It could not have been the intention of the Legislature to vest the Collector with power to determine the proportion of division of crops finally in the sense of being not open to regular suit. But the order of the Collector will be enforceable as a decree. (See *Bholabhai v. Adesang*, I. L. R., 9 Bom., 75.)

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

Rights and liabilities
as to possession of crops.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be

decmed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

Exclusive Possession :—In the case of receiving produce-rent by appraisal, the rule laid down in this section, follows the old custom. But a change has been made in the system where produce is divided, *i. e.*, *agorebutai*, where the landlord hitherto kept an *agora* and therefore was in joint possession with the tenant.

Fullest crop :—In a suit to recover bhaoli rent, the damage to the plaintiff was held to be the value of the crops at the time they were due and not subsequently—(*Luchmun Persad v. Hoolas Mahtoon*, 11 W. R., 151; *Kristo Bandhu v. Rotish Shaik*, 25 W. R., 307). The appraisalment of the fullest crop of similar lands in the neighbourhood is to be the estimate only when the tenant (1) removes the produce, and (2) removes at such a time or in such a manner as to prevent the due appraisalment. But suppose in a dispute neither party availed of the provisions of sections 69 and 70, and the landlord refused to divide the crop or make an appraisalment, in a subsequent suit he shall have to prove the actual quantity of produce, though that quantity can in no case exceed an appraisalment of the crops of similar lands. In a suit for bhaoli rent where the quantity of land is disputed, and the landlord produces as evidence a khusra or appraisalment of the land, it is not necessary for him to show that the estimate was drawn up in defendant's presence and acknowledged by him, but only that defendant had notice when the khusra was about to be made—(*Hurco Narain v. Baljeet Jha*, 24 W. R., 125.)

Liability for rent on change of landlord or after transfer of tenure or holding.

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer, and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

Application of this section :—It should be observed that this section applies only when the tenant *has paid his rent* to the original landlord without notice of the transfer. Where, however, the tenant has *not paid his rent* to the former landlord, the transferee is entitled to recover it from him; the question of costs will still depend upon a prior notice or otherwise. If on the other hand, after having notice of the transfer, the tenant chooses to pay his rent to the former landlord, he does so at his risk and cannot plead such payment in amount in suit for rent by the new landlord—(*The Collector of Rajshahye v. Hara Sundari*, Sp., W. R., Act X, C). But if he had no notice, actual or symbolical,

he is justified in paying rent to the old landlord—(*Thakurda v. Pitambur*, S. D. A., 1859, 820); and the word transfer includes not only sale, gift or the like, but also mortgage or lease.—See definition of these terms in the Transfer of Property Act. “When a tenant pays rent to his landlord, without knowing that he has created an intermediate tenure, he is not bound to pay it again to the intermediate holder—(*Sheik Attapayi v. Sheikwat*, Marsh., 102; *Nilmani v. Hills*, 4 W. R., Act X, 38.) There is a similar provision in the Transfer of Property Act: “If the lessor transfer the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him; provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee. The lessor, the transferee and the lessee may determine what portion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.” (Section 9.)

General notice in the prescribed manner :—The following mode of serving the general notice has been prescribed by the Local Government:

“Section 72 (2).—The general notice referred to in this sub-section may be published by the transferee by fixing up a written notice to the tenants in the village-office, or in the presence of not less than two persons on some conspicuous place on the lands, and by proclaiming to the tenants by beat of drum in every village to which the transfer extends, that the interest of the former landlord has passed to the transferee. The transferee may, if he thinks fit, apply for service of the notice to the Civil Court having jurisdiction to entertain a suit for arrears of rent of the holding, and the Court shall thereupon serve the notice as herein-before prescribed on payment of the process-fee prescribed by the High Court.”

It should be observed, however, that sub-section (2) only provides that a general notice in the prescribed form shall be a sufficient notice, but it does not provide that any other mode of publishing a general notice will *not* be sufficient. Hence, if an auction purchaser in execution proceedings takes possession under section 319 of the Civil Procedure Code, and his purchase is proclaimed to the tenants by beat of drum, that will be a sufficient notice: or, if he chooses, he may serve each of the tenants with a written notice of his purchase. Similarly, purchasers of estates for arrears of revenue may proceed under section 29 of Act XI of 1859, and purchasers of patni taluks, for arrears of rent, under section 15, sub-section 2, of Regulation VIII of 1819.

Time from which the title of the transferee dates :—Section 8 of the Transfer of Property Act provides :—“Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof: such incidents include, where the property is, land or house, the rents * * * accruing after the transfer.”

So section 36 of the same Act provides :—“In the absence of a contract or local usage to the contrary, all rents shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor

and the transferee, to accrue due from day to day and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof." Similarly it has been held that the title of an auction-purchaser under a decree relates back to the date of sale, although the sale may not have been confirmed until long afterwards:—(*Kali Das v. Hur Nath*, W. R., Gap. No. 1864, 279). But in *Bipin Bihari v. Jadu Nath*, 21 W. R., 37, it was held that the title of the purchaser accrues from the date of the confirmation of sale. The question was settled by the Full Bench in *Bhyrub Chunder v. Sondamini*, 1. L. R., 2 Cal., 141, which held that the title of the purchaser accrued from the date of sale, and that on the confirmation of the sale, the share purchased must be considered to have vested in the purchaser from the date of the sale. This case was followed in *Ramesvar-nath v. Mewar Jugjeet*, 1. L. R., 11 Cal., 341. Section 316 of the Civil Procedure Code, however, has brought about a change: It provides: "When a sale of immoveable property has become absolute in the manner aforesaid, the Court shall grant a certificate stating the property sold and the name of the person who at the time of the sale is declared to be the purchaser. Such certificate shall be as the date of the confirmation of the sale, and so far as regards the parties to the suit, and persons claiming under or through them, the title to the property sold shall vest in the purchaser, *from the date of such certificate and not before*: provided that the decree under which the sale took place was still subsisting at that date." But in the interval between the sale and the confirmation of the sale, there is not merely a contract for sale, but an inchoate transfer of title which only requires confirmation to perfect it—(*Pran Gour v. Hemanta Kumari*, 1. L. R., 12 Cal., 597). In a sale for arrear of revenue the transfer dates from the time the sale becomes final in conclusion. (Section 28 of Act XI of 1859.)

73. When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

Liability for rent
after transfer of occu-
pancy-holding.

Where the occupancy raiyat transfers without consent:—"To meet those cases in which transfer without the landlord's consent is a valid custom, we have provided in section 73 that, until notice of such transfer is duly served on the landlord, the transferor and the transferee shall be jointly and severally liable for arrears of rent accruing after the transfer." (*S. C. B. III.*)

Hence this section applies to cases where the occupancy holding is transferable by custom, but not to cases where it is not transferable. For effect of transfer of non-transferable occupancy holdings, see pp. 131-134 *ante*. As to occupancy holdings transferable by custom, see section 178 (3) *d* and notes. A similar provision appears in section 108 of the Transfer Property Act: "In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

- (i) The lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities

attaching to the lease. Nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of the Court of Wards, to assign his interest as such tenant, farmer, or lessee."

Notice in the prescribed manner:—The following rule has been prescribed by the Local Government under this section :

"Section 73.—Notice under this section shall be in writing, and shall be delivered to the landlord or his agent, or, where two or more persons are joint landlords, to their common agent referred to in section 188, or to their common manager appointed under section 95, as the case may be, at the landlord's village office, or at such other convenient place as may be appointed by the landlord for the payment of rent under sub-section (2) of section 54."

Illegal Cesses, &c.

74. All impositions upon tenants under the denomination of *abwab*, *mahtut*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Abwab, &c., illegal.

The following extracts from the debate on the Bill will throw light on this section. The Hon'ble Baboo Peary Mohun Mukerji moved that to section 74 an exception be added to this effect, namely :—

"Bonus or salani paid to the landlord by the raiyat, in consideration of the former allowing the latter to do an act which he is not lawfully entitled to do, shall not be deemed an imposition within the meaning of this section."

"Hon'ble members would, he thought, agree to the principle of this amendment. Considering the stringent nature of the provision contained in section 74, and the heavy penalty provided for all impositions of illegal cesses, it was necessary that express exception should be made for payments made by the tenant, in addition to actual rent, which did not possibly come under the designation of illegal cesses. The bonus paid by the raiyat, for instance, for taking earth for manufacturing bricks, or for cutting timber where he has not the right to do so, was no illegal cess."

The Hon'ble Rao Sahib Vishvanath Narayan Mandlik said :—"The Government does get such fees in estates which are not permanently settled in the Bombay Presidency. Perhaps the hon'ble member in charge might reconsider the matter."

The Hon'ble Sir Stenart Bayley said that "the clause had been considered, and in principle not objected to, but there were grave reasons for not retaining it. The Committee had retained the substantial law in the same form as it was in this section, and therefore whatever judgments of Courts on it had already been passed would still apply. What was illegal would still be illegal, and what was legal would still remain so. For these reasons he thought the amendment should not be accepted by the Council."

Old Acts:—"The impositions upon the raiyats, under the denomination of *abwab*, *mahtat* and other appellations from their number and uncertainty, having become intricate to adjust and a source of oppression to the raiyats—all proprietors of land and dependant talukdars shall revise the same in concert with

the raiyats, and consolidate the whole with the *asil* into one specific sum. In large zemindaries or estates, the proprietors are to commence this simplification of the rents of their raiyats in the parganas where the impositions are most numerous, and to proceed in it gradually till completed, but so that it be effected for the whole of their lands by the end of Bengal year 1198 in the Bengal Districts, and of the Fussilee and Willayati year in the Behar and Orissa Districts, these being the periods fixed for the delivery of pottas as hereinafter specified." (s. 54, Regulation VIII of 1793.) "No actual proprietor of land or dependant talukdar or farmer of land of whatever description shall impose any new abwab or mahtat upon the raiyats under any pretence whatever. Every execution of this nature shall be punished by a penalty equal to three times the amount imposed; and if at any future period, it is discovered that a new abwab or mahtat has been imposed, the person imposing the same shall be liable to this penalty for the entire period of such imposition (s. 55 *Ib.*). "In the event of any claims being preferred by proprietors of estates or dependant talukdars, farmers or raiyats on engagements wherein the consolidation of *asil*, abwab &c., shall appear not to have been effected, they are to be nonsuited with costs" (s. 61 *Ib.*). "Such parts of Regulation VIII of 1793 and of Regulation IV of 1794 as require that proprietors of land shall prepare forms of pottas, and that such forms shall be revised by the Collectors, and which declares that engagements for rent contracted in any other mode than that prescribed by the Regulation in question shall be deemed to be invalid, are likewise hereby rescinded and the proprietors of land shall henceforth be considered competent to grant leases to their dependant talukdars, under-farmers and raiyats, and to receive correspondent engagements for the payment of rent from each of these classes or any other classes of tenants according to such form as the contracting parties may deem most convenient and most conducive to their respective interests, provided; however, that nothing herein contained shall be construed to sanction or legalise the imposition of arbitrary or indefinite cesses, whether under the denomination of abwab, mahtat or any other denomination. All stipulations or reservations of that nature shall be adjudged by the Courts of Judicature to be null and void; but the Court shall notwithstanding maintain and give effect to the definite clauses of engagements between the parties, or in other words, enforce payment of such sum as may have been specifically agreed upon between them." (s. 3, Regulation V of 1812). "Every under-tenant or raiyat, from whom any sum is exacted in excess of the rent specified in his pottas, or payable under the provisions of this Act, whether as abwab or under any other pretext, shall be entitled to recover from the person receiving such rent, damages not exceeding double the amount so exacted" (s. 10 of Act X of 1859 and s. 11 of Act VIII of 1869 B.C.)

Application of this section:—Section 61 of Regulation VIII of 1793 and section 3 of Regulation V of 1812 were repealed by s. 1 of Act XVI of 1874; and it should be remembered that this Act repeals ss. 54 and 55 of Regulation VIII of 1793 (schedule 1) without enacting any provision about the consolidation of rent,—of the whole with the *asil* into one specific sum. All that this section prohibits is the imposition under the denomination of *abwab*, *mahtat* or other like appellations in addition to the actual rent. Hence in all cases about illegal cesses, the question will now turn about the meaning of the words "actual rent." If a zemindar demands a cess over and above the original rent, which has not the denomination of *abwab*, *mahtat*, or the like, and the raiyat consents and contracts to pay it, this demand and the old rent form a new rent lawfully claimable under the contract, and which together will be the actual rent—(Jocutullah

What are not abwabs but actual rent.

v. Jngodindra Narnain, 22 W. R., 12.) And so if a raiyat, for the purpose of preventing disputes with his landlord, agrees to make a definite payment to the landlord in addition to his rent, the additional payment cannot be treated as an illegal cess; for section 3, Reg. V of 1812, rather favors such arrangements and provides for their being enforced—(*Serajunge Jute Company, Limited, v. Torabdee Akoond*, 25 W. R., 252). A condition in a lease, that the tenant will pay to the landlord collection charges, can be enforced if the condition is definite and certain in its nature, and forms part of the consideration for the lease—(*Mahomed Fayez Chowdry v. Jamoo Gazeo*, I. L. R., 8 Cal., 730). Certain payments which were not so much in the nature of cesses as of rent in kind and which were uniform and had been paid by the raiyat from the beginning according to local custom were held not to be illegal cesses—(*Budhun Orawan Mahton v. Jemadar Baboo Juggessur Doyal Singh*, 24 W. R., 4.)

Khuntagari not an abwah.

Khuntagari or the levying by riparian proprietors of a charge imposed upon boatmen for driving pegs into the river bank for the purpose of attaching their boats thereto, is not an illegal cess—(*Dhunput Singh v. Denobundhu*, 9 C. L. R., 279.) So dāk cess is not an abwah, because it is nowhere declared to be illegal and it is

recoverable under a contract under section 12 of Act VIII of 1862 B.C. Section 3 of that Act provides that

"it shall be lawful for the magistrate of any district or for such officer as the Government may from time to time direct to raise, as hereinafter provided, the monies necessary for the payment of the establishments required for the purpose of efficiently maintaining the zemindari dāks within the district, from all zemindars, sadar farmers and other persons paying revenue direct to Government in respect of lands situated within the district;" and section 5 provides: "The magistrate or such other officer as aforesaid shall in each and every year, on or before the last day of the month of December, fix, subject to the approval and revision of the Commissioner of the Division, the total sum necessary for the next ensuing year for the efficient service of the zemindari dāks in his district, and apportion such amount rateably on the sadar jumma of the parties liable as aforesaid to pay the same, and shall appoint the days for the payment thereof." Section 8 provides: "It shall be lawful for such magistrate or other officer as aforesaid by an order to that effect, to exempt from the liability to payment of an assessment under this Act any person the sadar jumma of whose estates in any one district does not exceed fifty rupees a year." Section 9 provides: "The sums leviable under this Act shall be paid into the district treasury half yearly and in advance by the persons liable to pay the same: and any person or the local agent of any person liable to pay any sum assessed under this Act, who shall refuse or shall for the space of thirty days after the day appointed for the payment thereof neglect to pay the same, shall be liable to pay double the amount so assessed, which said double amount, in default of immediate payment, shall be levied by the order of the magistrate or of such other officer as aforesaid by distraint and sale of moveable property of the person making the default. Provided always that no person shall become liable to pay double the amount originally assessed, so long as any appeal instituted by him under section 7 of this Act shall be pending." Section 10 provides: "If the whole of the sum raised for the service of any one year be not actually required for that service, the surplus should be placed to the credit of the zemindari dāk account for the next ensuing year, and shall go in reduction of the total sum to be levied for the service of that year under this Act: and when a double amount is levied under the last preceding section, so much thereof as is in excess of the same for which the person from whom it is levied was in the first instance assessed, shall in like

manner be placed to the credit of the next ensuing year's account, and go in reduction of the total sum to be levied for that year." And section 12 provides: "Nothing in this Act contained shall in any way affect or alter any contract or engagement made or to be made by any zemindar with any person holding under him." Under this last section if a raiyat has agreed to pay dāk cess to the zemindar or to his superior landlord, that contract is valid. Similarly other

Other cesses legally cesses recoverable as rent under any enactment are not recoverable. cesses but rent.—See section 3 (5) p. 27 and p. 35 ante.

Company's batta in cases of tenure existing from the time when the sicca rupee was prevalent or of tenures whose rent has been fixed in

Company's batta. sicca rupees, is, I presume, not an abwab but a mere exchange, and therefore legally recoverable. Act XVII of 1835 first introduced new coins known as Company's rupee, and the relative value between the new coins and the old ones is thus laid down in section 4: "And be it enacted that the said rupee (Company's rupee) shall be received as equivalent to the Bombay, Madras, Furrakabad and Sonat Rupees, and to fifteen-sixteenths of the Calcutta sicca rupee, and the half and double rupee respectively shall be received as equivalent to the half and double of the above mentioned Bombay, Madras, Farrukabad and Sonat rupees, to the half and double of fifteen-sixteenths of the Calcutta sicca rupee." But the existing contracts for payment of Calcutta sicca rupees at a different rate from the above, if payment was made in any other Presidency, was kept intact by section 6 which ran thus: "Provided that if in any contract for the payment of Calcutta sicca rupees it shall have been specially stipulated that if payment be made in the territories of Madras, Bombay or Agra Presidency, it shall be made in the rupee now current in those Presidencies respectively, at a different rate from that above provided with reference to the Calcutta sicca rupee, the contract shall be satisfied by payment within those territories of Company's rupees of the amount of Farrukabad, Madras, or Bombay rupees so specially stipulated:—Provided also, that if payment of the principal or interest of the Public Debt be made for the convenience of the creditors at any Public Treasury other than as stipulated in the Notes and engagement of the Government it shall be competent to the Government to make such payments at the same exchange as heretofore." It follows from these provisions that where the contract is in sicca rupees, it is quite legal under Act XVIII of 1835 to recover its value in Company's rupees, or in other words to recover Company's batta or exchange. A sicca rupee exceeds the Company's rupee by 1 anna 5 kowris and 1 kranti. The other Acts relating to the silver coinage are Act XIII of 1836, Act XXVI of 1837, and Act XXI of 1838. Under the first of these, the Calcutta sicca rupee ceased to be a legal tender. The sicca rupee no longer exists as a coin, though it is still used in accounts. It should be remembered that under the present section (74), the actual rent is recoverable, and when the contract is in sicca rupee, is not the Company's rupee plus the batta or exchange the actual rent? Act XIII of 1836 provides that "Sicca rupees shall cease to be a legal tender in discharge of any debt," but it does not provide that a contract in sicca rupees is illegal. If such a contract is made, it is enforceable only in its equivalent value of Company's rupee under the above. Though I have thus given with some diffidence above my views on the subject, I ought to state that in a Sadar-Dewani decision, batta or exchange has been held to be an illegal cess.—(Chalken Sahoo v. Roop Chand Panday, S. D. A., 1848, 680).

The following have been held to be illegal cesses: (1) nayay or an exaction

What are abwabs.

from the remaining raiyats to make up the rents of those who had absconded or died—(s. 63 Reg. I of 1793;

Dhalee Pramanik v. Ananda Chunder, 5 W. R., Act X, 86); (2) *bardana* for the subsistence of the zemindar and kotwalee, a cess for tobacco—(*Chuckun Shahoo v. Roop Chand Panday*, S. D. A., 1844, 680); (3) *Chanda* or subscription—(*Meghnath Thakur v. Meliss*, S. D. A., 1852 4); (4) *parobi* or festival cess—(*Kamala Kanta v. Kalu Mahomed*, 3 B. L. R., H. C., 44; 11 W. R., 395); (5) *purvi bhikta*, (*Per contra Jagodish Chunder v. Tarikulla*, 24 W. R., 90) a present to the zemindar on his son's first eating rice or *annaprasan*—(*Nobin Chunder v. Gurugovind*, 14 W. R., 447); (6) *Russum kazza* or *Kazie's* fees; although the raiyat had paid it until a judge by proclamation declared it illegal, and although the assessment at the Decennial Settlement was alleged to have included it—(*Luckhee Debee v. Sheik Alta*, S. D. A., 1852, 552); (7) *patwari's* wages or allowances (*Burma v. Sree Nunda*, 12 W. R. 29; *Mengur Munder v. Hari Mohan*, 23 W. R., 447); (8) *Zabita batta*, an excess of half an anna in the rupee on the jumma, although, in this instance, the *kabuliyat* stipulated that the farmer should recover such sums over and above the agreed jumma, as were realised in the *moffussil* under that head—(*Radhamohan v. Gunga Persad*, 7 Sel. Rep. 142). (9) a cess, being a certain proportion of every maund of goor (molasses) manufactured, over and above the regular money rent—(*Sonam Sukul v. Sheik Elahi Buksh*, 7 W. R., 453); (10) a tax on cattle—(*Bhagirath v. Ram Narain*, 9 W. R., 300); (11) *Nuzzuranas* and *Mehuranees* have been allowed on the ground that the provisions against the imposition of *abwabs* were intended to prevent the imposition of new *abwabs* and not to disallow imposts in force before the Decennial Settlement,—(*Rajah Madho v. Raja Bidyanund*, S. D. A., 1848, 442). These should, under the Full Bench decision of *Chultan Mahton*, be now considered as not recoverable; (12) so a claim for *dasturi batta* and *poonia nuzzurnas* (presents on assessment or payment of the first instalment of rent) have been held valid, when the *kabuliyat* specified these items, the Court considering that section 3 of Regulation V. of 1872 which authorises the landholders to grant such *pottas* as they may think proper, with the proviso that this should not legalise arbitrary or indefinite cesses, legalised customary cesses when specified in the *pottas* or *kabuliyat*, because the Regulation goes on to provide that while all stipulations for such arbitrary or indefinite cesses were to be held null and void, the definite clauses of engagements should be carried into effect, and the payment of such sums as were specifically agreed upon enforced—(*Bhoor Pasban v. Khem Chand*, S. D. A. 1857, 1508). This decision should, I presume, be also supposed to be overruled by the Full Bench referred to. (11.) In *Chultan Mahton v. Tiluk Dhari*, I. L. R., 11 Cal., 175, F. B., the plaintiff demanded the following customary *abwabs*."

On the nagdi tenure.

				Rs.	As.	P.	
<i>Rent</i>	...	...	...	75	9	0	
<i>Dasturi</i>	...	...	...	0	7	9	at $\frac{1}{2}$ anna per bigha.
<i>Hujjutana</i> (fee for the hujjut or receipt)	...	...	...	0	1	0	
<i>Sonari</i>	...	...	...	2	6	0	at $\frac{1}{2}$ anna per rupee.
<i>Batta Mal</i>	...	...	...	3	11	0	at 3 pice per rupee.
<i>Batta Company</i>	...	...	...	3	13	6	Ditto.
<i>Dak Cess</i>	...	...	...	1	11	0	
<i>Road Cess</i>	...	...	...	12	10	0	

Total... 108 6 0

On the bhaoli tenure.

<i>Neg</i> (or the landlord's due) ...	1 seer 4 chataks per maund.
<i>Pansera</i> (or the harvest fee) ...	5 seers.
<i>Bohwara</i> (for the payment of the wages of the village watchman) ...	2 chataks per maund.
<i>Powhi</i> (for the payment of the wages of the priest) ...	4 chataks per maund.
<i>Nocha</i> (for the payment of the wages of the village establishments, viz., the patwari 2 chataks, the gomashtha 2 chataks, the amin 2 chataks, the pales 1 chatak, the nowinsinda 1 chatak) ...	8 chataks per maund.
<i>Mangun</i> ...	30 seers per plough.
<i>Sidha</i> (patwari's due) ...	10 seers per plough.

The defendant denied that any arrears of rent were due, but whilst admitting that he was liable to pay 1 anna per raiyat for *hujjutana*, and 3 pice per rupee for *Batta Company*, contended that other items were illegal cesses and were not recoverable. The Subordinate Judge found that the defendant was liable for road cess and for the items admitted by him, but as regards the remaining items other than the *assul* rent he held that they were illegal, as being contrary to s. 54 of Reg. VIII of 1793. The District Judge found that the evidence given satisfactorily established a custom showing that the cesses claimed on the *nugdi* tenure had been prevalent in the village for very many years, and that they had been paid by other raiyats for a long period; and as regarded the dues claimed on the *bhaoli* lands, that the evidence established that these dues had been collected and paid from time immemorial. The High Court found that "*the plaintiff's suit, so far as the disputed abwabs are concerned should be dismissed.*" They further held that where it is not actually proved that abwabs have been paid or have been payable before the time of the Permanent Settlement, a landlord is not legally entitled to recover that as against his raiyats, even assuming that by the custom of the estate, the raiyats and their ancestors before them, have for a great number of years paid such abwabs. *Seemle* that a claim for the recovery of abwabs existing before the time of the Permanent Settlement would not be enforceable. The effect of this decision will be discussed later on. But at present it is worth noting that in this decision the Court did not find anything with regard to the undisputed items of abwabs, viz., *hujjutana* and company's *batta*. *Dak* cess as we have already shown is not an *abwab* or illegal cess.

Judicial views on abwabs :—Mr. Justice Norman laid down the proper rule

The ratio decidendi of the decisions on the imposition of abwabs.

on this subject in *Kamala Kanta v. Kanoo Mahomed*, 11 W. R., 395. His judgment was as follows: "The defendants took a village in *ijara* from the plaintiff for 10 years. Before the expiration of their lease, the defendants sublet the property, and at the same time entered into an agreement with the plaintiff to the following effect:— 'We have been getting your *purabi* (festival cess) paid from the villages at rupees 175. The *durijaradar* has nothing to do with the said *purabi*, we shall pay you the same year after year.' It was found by both the Lower Courts and is not now denied that this *purabi* is an arbitrary and indefinite cess on the raiyats such as is described in section 54 of Regulation VIII of 1793. The exaction of such a cess would have been illegal under section 3 of Regulation V of 1812, and is now prohibited by section 10 Act X of 1859. A contract providing for the collection

and payment over to the zemindar of the proceeds of such a cess, appears to us to fall within the rule stated by Chief Justice Holt in *Bartlet v. Viner Cartherd*, 252. Every contract made for or about any matter or thing which is prohibited and made unlawful by statute is a void contract.—See *Domat's Civil Law*, Vices of Covenants, Tit. XVIII section 4. We think the object of the contract was therefore illegal and that the suit was properly dismissed on this ground by the Judge." But in *Jagodish Chunder v. Tarikulla*, 24 W. R., 90, the Court, Macpherson, O. C., J., and Birch, J., observed, "*It seems to us on the evidence that it (purabi) is not in the nature of an abwab or illegal cess but really in the nature of a payment which the parties contracted to make; that there is nothing illegal about it, it being part of the consideration for which the agreement was entered into.*" In both these cases therefore the question as to whether a *purabi* was an abwab turned upon evidence. The law as to the imposition of abwabs has been settled by the Full Bench decision of *Chultan Mahtoon v. Tilukdhari Sing*, I. L. R., 11 Cal., 175, F. B.: Mitter, J. (Tottenham and Pigott, J.J., concurring), remarked: "It has been contended before us on behalf of the plaintiffs that the liability relating to the payment of these abwabs flows from the incidents of the contract under which the lands were let to the defendant and his ancestors, such incidents, though not expressly mentioned in the contract, being still deducible from the usage or custom established on the evidence. I am of opinion that this contention, so far as it goes, is sound; but the question is whether, having regard to the laws in force

If abwabs are illegal, contracts about them are illegal too.

relating to abwabs, such a contract is enforceable. The solution of this question depends upon another question, namely, whether the imposition of such abwabs as these is prohibited and made unlawful by any law in force in this country? If the affirmative be the correct answer of this latter question, it does not admit of any doubt that the plaintiffs are not entitled to enforce the contract and to recover the disputed items; because 'every contract made for or about any matter or thing which is prohibited and made unlawful by statute, is a void contract.' (Section 23, Indian Contract Act.) Section 54, Regulation VIII of 1793, says: 'The imposition upon the raiyats under the denomination of abwab, mahtut, and other appellations, from their number and uncertainty having become intricate to adjust and a source of oppression to the raiyats, all proprietors of land and dependent talukdars shall revise the same in concert with the raiyats, and consolidate the whole with the assul into one specific sum.' The next section provides a penalty for the infraction of the aforesaid provision. Section 61 of the same Regulation has laid down that, 'in the event of any claims being preferred by proprietors of estates or dependent talukdars, farmers or raiyats on engagements wherein the consolidation of assul, abwab, &c., shall appear not to have been made they are to be non-suited with costs.' Section 3 of Regulation V of 1812 provides as follows: 'Such part of Regulation VIII of 1793 and of Regulation IV of 1794 as require that the proprietors of land shall prepare forms of pottas, and that such forms, revised by the Collectors and which declare that engagements for rent contracted in any other mode than that prescribed by the Regulations in question shall be deemed to be invalid, are likewise hereby rescinded, and the proprietors of land shall henceforward be considered competent to grant leases to their dependent talukdars, under-farmers, and raiyats, and to receive correspondent engagements for the payment of rent from each of these classes or any other classes of tenants according to such form as the contracting parties may deem most convenient and conducive to their respective interests, provided, however, that nothing herein contained shall be construed to sanction or legalize the imposition of arbitrary or indefinite cesses whether under the denomination of abwab, mahtut,

or any other denomination. All stipulations or reservations of that nature shall be adjudged by the Courts of Judicature to be null and void; but the Court shall notwithstanding maintain and give effect to the definite clauses of the engagements between the parties, or, in other words, enforce payment of such sum as may have been specially agreed upon between them.' Section 10 of Act X of 1859, and section 11 of Bengal Act VIII of 1869, declared the exaction of any sum in excess of the rent specified in the pottah of an under-tenant or a raiyat, or payable under the provisions of the aforesaid Acts as abwabs, &c., to

The abwabs are illegal. be illegal. *Under the provisions of the Regulations and Acts cited above, it seems to me that a contract for the payment of abwabs is unlawful, and is not enforceable by law.* It has been contended before us that a claim for the recovery of the abwabs existing before the Permanent Settlement is enforceable notwithstanding these provisions, because section 54 of Regulation VIII of 1793 contained only a direction for the consolidation of the

Abwabs existing before the Permanent Settlement.

abwabs with the assul jumma, but no penalty was attached to an omission on the part of the landholders to act according to that direction. But it seems to me that this contention is not correct, because section 61 of the said Regulation, in my opinion, provided the penalty in question, that penalty being the non-suiting of the claim for the recovery of the abwabs. Even supposing that this contention is valid, still the plaintiffs cannot succeed in this case. *There being this plain direction in the Regulation, that if it was not complied with, it is for the landlord to prove that these abwabs existed at the time of the Permanent Settlement.* The plaintiffs in this case have not established this fact.

Not enforceable.

It has been next contended that, although the disputed items in the plaintiffs' claim are described in the plaint, as 'old usual abwabs,' and in the zemindari accounts also they are designated as abwabs, separate and distinct from the specified rent, yet they are not abwabs but part of the rent. This contention is mainly based upon the ground that any thing which is certain and definite does not come under the class of abwabs, the imposition of which is prohibited by the Regulations.

What are abwabs?

Although the Regulations did not clearly define what an abwab is, still I think that it cannot be maintained that any thing which is definite and certain is not an abwab under the Regulations, although the parties to the contract may call it so. It seems to me that the Regulations, without defining accurately what an abwab is, left this question for the determination by the Court in each case upon the evidence.

Definite cesses may be abwabs.

I cannot find anywhere in the Regulation the precise definition of the word abwab which would justify me to treat the disputed items of claim as part of the specified rent, although the plaintiffs claim them in the plaint and entered them in the zemindari accounts as 'abwabs.' It has been further said that, as there is a

Are abwabs recoverable under special agreement under section 3, Reg. V of 1812?

contract between the parties for the payment of these dues, under the latter portion of section 3, Regulation V of 1812, the plaintiffs are entitled to recover them. But the language of that section does not, in my opinion, support this contention; on the other hand, it provides 'that nothing therein contained shall be construed to sanction or legalize the imposition of arbitrary or indefinite cesses whether under the denomination of abwab, mahtut or any other denomination.' The last four lines of the section in question provide that the engagement for the payment of any sum as may have been specifically agreed upon between the parties shall be

No.

This provision, it seems to me, refers only to the amount which is by the contract fixed as the rent payable to the landlord. The section in question provides mainly, that the proprietors of

the land shall thenceforth be competent to grant leases to ryots, &c., and to receive corresponding engagements *for the payment of rent from them*. Having regard to the words of the section in question italicized, I think the words 'sum specified' refer to the amount of the rent specified. I do not think it necessary to notice in detail the decided cases on this point. There is a clear conflict in these decisions, some of them supporting the view which I take. These in which a contrary view has been taken, have been decided either upon the ground that the abwabs claimed in them, not being indefinite or uncertain, did not come within the class of abwabs, prohibited by the regulations, or, upon the ground that there were clear contracts between the parties for the payment. The last-mentioned ground is evidently based upon the construction of section 3, Regulation V of 1812, for which the learned Counsel for the plaintiffs contended. For the reasons given above, I am unable to adopt this construction. The view which I take of the section in question is supported by the decision of the *Sudder Dewanny Adawlat*, in *Radha Mohun Surma Chowdhry v. Gunga Pershad Chuckerbuttee*. As regards the other ground, viz., that anything which is not uncertain or indefinite, is not an abwab within the meaning of the Regulations, I have already dealt with it."

This decision therefore finds (1) that abwabs are illegal imposts, (2) that a

Effect of the Full Bench decision read with the present section.

contract for anything unlawful is void and not enforceable, (3) that what are abwabs should be determined upon evidence, (4) that in the case under trial the disputed items had been described by the plaintiff as abwabs, and therefore admitted to be so, (5) that the mere fact of a thing being definite and certain does not take it out of the category of abwab, (6) that the last 4 lines of section 3 of Regulation V of 1812, which speak of giving effect to definite clauses of engagements, refer to the amount which is by the contract fixed as rent payable to the landlord and not to abwabs though they may be definite, (7) that abwabs existing at the time of the Permanent Settlement but not consolidated with the *assul* cannot be recovered, and (8) that even if they were recoverable, there was no evidence in the case under trial that the disputed abwabs existed from the time of the Permanent Settlement. Now let us see what is the effect of this decision upon the present section. As we have already said the provision about the consolidation of abwabs with the *assul* has been repealed. The present section says that the actual rent shall be recoverable, but all impositions under the denomination of abwab, *mahtut* or other like appellations shall be illegal. Hence (1) if an extra amount is stipulated by the tenant and it is not illegal, or denominated as abwab &c., it shall form his actual rent and would be recoverable, (2) whether the extra amount is abwab or not should be found on evidence; (3) *dák cess* and Company's *batta* are recoverable under Act VIII of 1882, B.C. and Act XVII of 1835, and are therefore not illegal imposts; (4) if, however, it is found on evidence that the extra amount is abwab or illegal cess, all stipulations about its payment are void; (5) and a payment of an illegal cess for a long number of years does not validate it. Hence all cesses being illegal when not specifically included in the contract under which the *raiya*t pays rent, the mere payment of rent including a cess for 3 years cannot legalise an illegal impost—(*Dhalee Paramanik v. Anund Chunder*, 5 W. R., Act X, 85). So although the tenant had been adjudged by an *ex-parte* decree to pay a certain cess one year, that is no reason why he should be compelled to pay it every year—(*Orjoon v. Anund*, 10 W. R., 257). On the same principle contracts for unlawful things are void.

Abwabs not recoverable from *tehsildars* or intermediate holders.

Illegal cesses cannot be recovered, even from the *tehsildar* who has collected them for the landlord (*Nobin Chunder v. Gura Gobinda*, 25 W. R., 8). But if the money was

voluntarily paid by the tenants, the tehsildar is bound to account to the landlord for payment made to him by the tenant (Ibid). So abwabs cannot be recovered even from intermediate tenuro-holders who have contracted to pay them, and who have themselves collected them from the under-tenants (*Radhika Mohun v. Gunga Prasad*, 7 Sel. Rep. 142, o. e., 166, n. e.; *Thomas Meliss v. Meghnath Thakur*, S. D. A. 1852, 4; *Kamala Kanta v. Kalu Mahamad*, 3 B. L. R., 44, 11 W. R., 395).

Non-Judicial account of illegal cesses:—Sir George Campbell in his Administration Report of 1872-73, pp. 23—26 gives the following account of agricultural cesses:—The agricultural cesses are somewhat different in their character.

[“] Sir George Campbell's enumeration of cesses. They consist of various dues and charges levied from the ryots in addition to the regular rent, and generally in proportion to the rent. The Permanent Settlement Regulations

positively prohibited all such duties, strictly confining the zemindars to the customary rent proper; but in this as in other things these laws have been wholly set at defiance in modern times. The modern zemindar taxes his ryots for every extravagance or necessity that circumstances may suggest, as his predecessors taxed them in the past. He will tax them for the support of his agents of various kinds and degrees, for the payment of his income-tax and his postal cess, for the purchase of an elephant for his own use, for the cost of his stationary of his establishment, for the cost of printing the forms of his rent receipts, for the payment of his lawyers. The milkman gives his milk, the oilman his oil, the weaver his clothes, the confectioner his sweetmeats, the fisherman his fish. The zemindar levies his benevolences from his ryots for a festival for a religious ceremony, for a birth, for a marriage; he exacts fees from them on all change of their holdings, on the exchange of leases and agreements, and on all transfer and sales; he imposes a fine on them when he settles their petty disputes, and when Police or the Magistrate visit his estates; he levies blackmail on them when social scandals transpire, or when an offence or an affray is committed. He establishes his private pound near his cutcherry and realizes a fine for every head of cattle that is caught trespassing on the ryots' crops. The abwabs, as these illegal cesses are called, pervade the whole zemindari system. In every zemindari there is a naib; under the naib there are gomastahs; under the gomastahs there are piyadas or peons. The naib exacts a *hisabana* or perquisite for adjusting accounts annually. The naibs and gomastahs take their share in the regular abwabs; they have their little abwabs of their own. The naib occasionally indulges in an ominous raid in the mofussil: one rupee is exacted from every raiyat who has a rental as he comes to proffer his respects. Collecting peons, when they are sent to summon raiyats to the landholder's cutcherry, exact from them daily four or five annas as summon fees.

Perhaps the best proof of the extent and nature of the illegal cesses will be found in the Presidency division, the most widely educated and most under the eye of Government of the divisions in Bengal. The subjoined list of 27 different sorts of illegal cesses has been officially reported from the 24-Pergunnahs district alone:—

(1.) *Dāk khurcha*.—The cess is levied to reimburse the zemindars for amounts paid on account of zemindar dāk tax. The rate at which it is levied does not exceed three pice per rupee on the amount of the tenant's rent.

(2.) *Chanda*.—Including *bhikya* or *mangon*. A contribution made to the zemindar when he is involved in debt requiring speedy clearance.

(3.) *Parbony*.—It is paid on occasion of *poojah* and other religious ceremonies in the zemindar's house. The rates of its levy is not more than four pice per rupee.

(4.) Tohurria.—A fee paid on the occasion of audit of raiyats' accounts at the end of the year.

(5.) Forced labour or bazar.—This labour is exacted from the raiyats without payment.

(6.) Maroocha or marriage-fee.—Paid on the occasion of a marriage taking place among the raiyats. It is fixed at the discretion of the zemindar.

(7.) Ban Salami.—A fee levied on account of preparation of goor or molasses from sugar-cane.

(8.) Salami.—Including all fees paid on the change of raiyats' holdings and on the exchange of pottahs and kabulyuts.

(9.) Kharij dakhil.—A fee commonly at the rate of 25 per cent., levied on the mutation of every name in the zemindar's books.

(10.) Taking of rice, fish, and other articles of food on occasions of feasts in the zemindar's house.

(11.) Batta and multa kumrae.—The former is charged for conversion from sicca to Company's rupee; the latter on account of wear and tear of the same.

(12.) Fines.—These are imposed when the zemindar settles petty disputes among his raiyats.

(13.) Police khurcha.—A contribution levied for payment to police officers visiting the estate for investigating some crime or unnatural death.

(14.) Junimajatra and rash khurcha are exceptional imposts, levied on occasions of certain festivals.

(15.) Bardarce khurcha.—A contribution levied at heavy rates by a farmer taking a lease of a mehal.

(16.) Tax or income-tax levied by a few zemindars to reimburse for what they pay to Government on account of this tax.

(17.) Doctor's fees.—This is levied exceptionally by a few zemindars on the plea that they are made to pay a similar fee to Government.

(18.) Tant kur.—A tax of 4 annas levied from every weaver for each loom.

(19.) Dhaie mehal.—A fee levied from every wet-nurse carrying on her profession in the zemindar's estate.

(20.) Anchora salami.—A fee paid by persons carrying on illicit manufacture of salt.

(21.) Halbhanqun.—A fee paid by a raiyat on his plough-land for the first time in each and every year.

(22.) Mathoorree jumma.—A tax levied on barbers.

(23.) Shashun jumma.—A tax levied on Moochees for the privilege of taking hides from the carcasses of beasts thrown away in the bhangor of a village.

(24.) Punnah khurcha.—A contribution made by the raiyats on the day the punnah ceremony takes place.

(25.) Bastoo poojah khurcha.—A contribution made for the worship of bastoo pooroosh (god of dwelling houses) on the last day of the month of Pous.

(26.) Rashud khurcha.—A contribution levied to supply with provisions some district authority or his followers making a tour in the interior of the estate.

(27.) Nazarana or presents made to the zamindar on his making a tour through his estates.

In most districts these cesses are peculiar to the district. In all districts it must be said that these exactions largely prevail. It has been found that they are really almost quite universal, the only difference being that in some places and in some estates they are levied in greater numbers and amount, and in less numbers and amount in others.

The following is a translation of a list of abwabs actually exacted from the ten or fifteen house-holders of a small hamlet in Nuddea, men neither of substance nor yet of exceptional poverty. The zamindari gomastahs proceeded with their peons to this village during the inundation of 1871, and apportioning on an average their requirements at 3 annas to every rupee of rental, demanded a benevolence of fifty-four rupees and two annas. The translation is made from a list prepared under their own hand and admitted by them in Court.

	Rs. A. P.
Nuzzur to the naib at the punyah or the annual settlement of rent, when the first payment for the coming year is made ...	6 0 0
Nuzzur to the mahashoys or the zamindars (of whom there are 5 shares) on the same occasion ...	5 0 0
Nuzzur to gomastahs at the punyah ...	2 0 0
Tulubana or summons fees of peons at the punyah ...	1 0 0
Cost of conveying bamboos of Gopalnuggur ...	1 0 0
Tulubana of peon for the instalment of rent due in the month of Asharh	0 13 0
Tulubana of peon for the instalment of rent due in the month of Bhadro	1 5 0
Boat-hire	1 8 0
Parboni (a donation granted at the time of the poojah) to the amla of the sudder cutchery ...	6 8 0
To jamadar of the cutchery ...	1 0 0
To hal shana (a sort of under-bailiff) ...	1 0 0
Parboni to the 5 zamindars ...	5 0 0
To Sai Ram Sen, head mohurrir ...	1 0 0
Alms to the purohit (a family priest) of the zamindars	2 0 0
Alms to gomastahs ...	12 0 0
Alms to the mohurrir ...	3 0 0
To the zamindari burkundazes for the Holi festival	1 0 0
On account of zamindari dák tax ...	3 0 0
	<hr/>
	54 2 0

This case has been given at length to illustrate the usual nature of these exactions * * *. This case was especially reported by the Board of Revenue to Government."

Dr. Hunter gives the following abwabs in his *Statistical Account of Bengal*, Gya, pp. 70-72. These are more or less in vogue in all the Behar Districts.

Dr. Hunter's enumeration of cesses. "Besides the above-mentioned payment, there are a number of customary cesses sanctioned by immemorial antiquity, paid at harvest time by the cultivator to the

landlord or his servants. The ordinary tenure of land which will be described at length on a subsequent page, is analogous to metayer system, half the real or estimated out-turn of the crop at each harvest going to the landholder and half to the cultivator. But before the cultivator can take his half share of the produce, numerous demands have to be satisfied. These will vary in number and amount with the temper of the landowner, and the extent of the cultivator's power of endurance; but the following fees are generally demanded and paid without much reluctance:—(1) *Dáhiak* (literally 10 per cent.) is taken by the landlord, compensation for dryage and wastage. (2) *Manseri*, an extra seer in each maund—that is 2½ per cent. is often taken by the landlord in lieu of *dáhiak*, but sometimes both are demanded. (3) *Sídihá* (literally "daily food"): Accord-

ding to Mr. Bourdillon, this is taken at the time of sowing by the landlord's agents at the rate of $2\frac{1}{2}$ lbs. of rice with condiments to match from each cultivator. Mr. Beames puts it to 10 lbs from each house; but the amount of these taxes constantly varies, and the rates which prevail in one year are charged in the next. (4) *Mungan* is taken by the same agent at harvest. Mr. Bourdillon puts the amount at $6\frac{1}{2}$ seers for every 15 maunds, that is, about 15 per cent. from each cultivator; while Mr. Beames rates it higher, 80 lbs. for each plough owned by a cultivator. (5) *Nocha* or "plucking" is taken by the barahil at the rate of 2 chataks per maund, or about $\frac{1}{3}$ per cent. (6) *Fihia*, corruption of *fihal* "each plough," is a fee taken to cover the expense of the landlord's visitors. (7) *Sālamī* is a fee often demanded by the landlord on granting a new lease, or renewing an old one. (8) *Hujatana*, literally* "that which is disputed," is a fee given to the village accountant upon signing the quit-tance for rent. (9) *Dandidari* or *asitis*, called in the sub-division of Nawada, *sonari* "is the commission paid to the weigher of the produce, who himself, according to Mr. Beames, pays half of what he receives to the landlord. According to Dr. Buchanan Hamilton, the hereditary mendicants are usually supported by receiving a portion of the weigher's commission. (10) *Vishnu Parit* and *agaun* are names given to the percentage of crops which is made over to Brāhmins. The former is taken entirely from the cultivator's share, while the landowner helps to pay the latter tax.

"The preceding cesses are paid by the cultivators only; but other classes are not exempted from the following:—(1) There are certain fees still claimed by the landlord to cover the expense of converting native money into the coin of the realm; such as *batta kalahdar* for the conversion of copper money into sicca rupees, and *batta naiyab*, for the conversion into the rupees now in use. (2) *Bar-dānā* is paid by the owners of pack-bullocks, at the rate of 3d. for each bullock. (3) *Mutharfa* or house-rent is levied from all tradesmen at the rate of 9d. a year. (4) *Tolai* is taken from all petty traders resorting to fairs at the daily rate of one chatakk of oil, salt or tobacco. (5) *Jalkar* is a percentage on all fish caught in the village reservoirs or artificial channels. (6) *Bankar*, a similar percentage on jungle produce. (7) *Rasūm gilandazi* is taken from the wages of the workmen who are employed in constructing an embankment on the estate. (8) *Rasūmtari* is taken from the keeper of every liquor shop who sometimes has to pay a sum equal to the Government demand. (9) *Kahcharai* is a fee for leave to pasture cattle on an estate.

"All these various demands are not invariably levied. In times of scarcity most are remitted; but in years of plenty even more will be extorted on various pleas, such as to pay the expense incurred by the landlord in marrying one of his relations, or to cover the amount of a new tax levied by Government. In fact the cultivator is deprived by his landlord of all but the barest necessities; and he is so ignorant that he never thinks of applying for redress."

It will be observed that some of the above enumerated by Sir George Campbell and Dr. Hunter are not illegal cesses judicially considered.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money, or any portion of the produce of his land, is exacted by his landlord in excess of the rent lawfully payable, may, within

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

* This is wrongly explained: *Hujjat* means a receipt, and *hujatana* is what is paid for receipt.

six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

Old Act:—Section 11 of Act VIII of 1869 (B.C.) and section 10 of Act X of 1859 provided: "Every under-tenant or raiyat from whom any sum is exacted in excess of the rent specified in his potta, or payable under the provisions of this Act, whether as abwab or under any other pretext, shall be entitled to recover from the person receiving such rent, damages not exceeding double the amount so exacted or paid."

Except under any special enactment for the time being in force.—See Act IX of 1880 B.C., s. 47; Act II of 1882 section 74; Act V of 1875, s. 38. See also p. 35 and pp. 301—313, s. 74, *ante*.

Exacted.—Where a zemindar after granting a ticca lease, collects the rents direct from the raiyats, and the amount so received exceeds the rent due from the ticcadar, the excess amount so collected is an exaction and is recoverable under this section—(Ram Pershad v. Ramtahal, Marsh., 655). In other words, any sum which is collected by a landlord in excess of the amount due to him under the agreement with his raiyat, is an exaction, for the recovery of which a suit will lie under this section. It is not, however, an exaction when the excess is recovered by legal process, where, for instance, a tenant supplied the zemindar with rice, on the agreement that the value of the rice was to be deducted from the rent, and the zemindar without making the deduction, sued the tenant under Regulation VIII of 1819, and recovered the full amount of the rent, it was held that this was not an exaction under this section. "The tenant," observed the Court, "might have contracted his liability to pay the amount, and might have demanded a summary investigation as to the amount due, and he might have stayed the sale of the tenure by depositing the amount claimed. Instead of doing so, he paid the amount claimed to the zemindar. The zemindar having recovered the amount under a proceeding prescribed by law, the question is whether that is an undue exaction? He possibly might have demanded more than was due after allowing for the rice supplied, but the defendant, instead of demanding an investigation, paid the amount claimed with knowledge of all the facts. Can this be said to be an illegal exaction of rent within section 10, Act X of 1859? We think that it is not an illegal exaction of rent within the meaning that Act"—(Chundermoni v. Debendra Nath, Marsh., 420). And where, on the allegation that the defendant had sublet land to him for the purpose of raising crops under a contract to share the produce between them, plaintiff sought to recover the value of his share of the crop which the defendant had misappropriated, it was held the claim was for a sum exacted in excess of the rent—(Gurrebollah v. Fakcer Mahomed, 10 W. R., 203). But a suit for the recovery of money alleged to have been paid by the plaintiff to an ijaradar on account of arrears of rent, when the same has not been applied to the purpose for which it was given, is cognizable under this section—(Brojo Nath v. Shumbhoo Chunder, 18 W. R., 25).

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

"In drafting these provisions as to compensation, we have utilized *The Oudh Rent Act XIX of 1868*, sections 22-26: *The North-Western Provinces Rent Act XIX of 1868*, sections 22-26: *The Landlord and Tenant (Ireland) Act, 1870*,

1870, 38 and 39 *vic. Chap. 46*. *Provinces Tenancy Act IX of 1883* may have been also used. The first two Acts are available in Stoke's edition of the Legislative Enactments of India; we reproduce below extracts from the Irish Land Act.

EXTRACTS FROM THE IRISH LAND ACT, 1870 (33 & 34 VICT. CHAP. 46.)

4. Any tenant of a holding who is not entitled to compensation under sections one and two of this Act, or either of such sections, or, if entitled, does not make any claim under the said sections, or either of them, may on quitting his holding, and subject to the provisions of section three of this Act, claim compensation to be paid by the landlord under this section in respect of all improvements on his holding made by him or his predecessors in title.

Provided that—

(1.) A tenant shall not be entitled to any compensation in respect of any of the improvements following; that is to say—

- (a.) In respect of any improvement made before the passing of this Act, and twenty years before the claim of such compensation shall have been made, except permanent buildings and reclamation of waste land; or
 - (b.) In respect of any improvement prohibited in writing by the landlord as being and appearing to the Court to be calculated to diminish the general value of the landlord's estate, and made within two years after the passing of this Act, or made during the unexpired residue of a lease granted before the passing of this Act; or
 - (c.) In respect of any improvement made either before or after the passing of this Act in pursuance of a contract entered into for valuable consideration therefor; or
 - (d.) (Subject to the rule in this section mentioned as to contracts) in respect of any improvement made, either before or after the passing of this Act in contravention of a contract in writing not to make such improvement; or
 - (e.) In respect of any improvement made either before or after the passing of this Act which the landlord has undertaken to make, except in cases where the landlord has failed to perform his undertaking within a reasonable time.
- (2.) A tenant of a holding under a lease or written contract made before the passing of this Act shall not be entitled, on being disturbed by the act of the landlord in or on quitting his holding, to any compensation in respect of any improvement, his right to which compensation is expressly excluded by such lease or contract.

(3.) A tenant of a holding under a lease made either before or after the passing of this Act for a term certain of not less than thirty-one years, or in case of leases made before the passing of this Act for a term of a life or lives with or without a concurrent term of years, and which leases shall have existed for thirty-one years before the making of the claim, shall not be entitled to any compensation in respect of any improvement, unless it is specially provided in the lease that he is entitled to such compensation, except permanent buildings and reclamation of waste land, and tillages or manures, the benefit of which tillages or manures is unexhausted at the time of the tenant quitting his holding :

(4.) A tenant of a holding, who is quitting the same voluntarily, shall not be entitled to any compensation in respect of any improvement when it appears to the Court that such tenant has been given permission by his landlord to dispose of his interest in his improvements to an incoming tenant upon such terms as the Court may deem reasonable, and the tenant has refused or neglected to avail himself of such permission.

(5.) Out of any moneys payable to the tenant under this section, all sums due to the landlord from the tenant or his predecessors in title in respect of rent, or in respect of any deterioration of the holding arising from non-observance on the part of the tenant of any express or implied covenant or agreement may be deducted by the landlord, and also any taxes payable by the tenant due in respect of holding and not recoverable by him from the landlord.

Any contract between a landlord and a tenant whereby the tenant is prohibited from making such improvements as may be required for the suitable occupation of his holding and its due cultivation shall be void both at law and in equity, but no improvement shall be deemed to be required for the suitable occupation of a tenant's holding and its due cultivation which appears to the Court to diminish the general value of the estate of the landlord, nor shall anything in this Act contained authorise or empower any tenant or occupier, without the previous consent in writing of the landlord, or break up or till any land or lands usually let, occupied, or used as grazing or grass lands or let expressly as grazing or meadow land, or to cut timber without the consent of the landlord ; provided that the tenant may cut timber planted and registered by him or his predecessors in title.

Any contract made by a tenant by virtue of which he is deprived of his right to make any claim which he would otherwise be entitled to make under this section shall, so far as relates to such claim, be void both at law and in equity, subject, however, to the enactment contained in the section of this Act relating to the partial exemption of certain tenancies, and to the provision in this section as to any improvement made in pursuance of a contract entered into for valuable consideration therefor.

Where a tenant has made any improvements before the passing of this Act on a holding held by him under a tenancy existing at the time of the passing thereof, the Court, in awarding compensation to such tenant in respect of such improvements, shall, in reduction of the claim of the tenant, take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held and any benefits which such tenant may have received from his landlord in consideration, expressly, or impliedly, of the improvements so made.

5. For the purposes of compensation under this Act in respect of improvements on a holding which is not proved to be subject either to the Ulster tenant-right custom or to such usage as aforesaid, or where the tenant does not seek compensation in respect of such custom or usage, all improvements on such holding shall,

Presumption in respect of improvements.

until the contrary is proved, be deemed to have been made by the tenant or his predecessors in title, except in the following cases where compensation is claimed in respect of improvement made before the passing of this Act :

(1.) Where such improvements have been made previous to the time at which the holding in reference to which the claim is made was conveyed on actual sale to the landlord or those through whom he derives title :

(2.) Where the tenant making the claim was tenant under a lease of the holding in reference to which the claim is made :

(3.) Where such improvements were made twenty years or upwards before the passing of this Act :

(4.) Where the holding upon which such improvements were made is valued, under the Acts relating to the valuation of rateable property in Ireland at an annual value of more than one hundred pounds :

(5.) Where the Court shall be of opinion that in consequence of its being proved to have been the practice on the holding, or the estate of which such holding forms part, for the landlord to make such improvements, such presumption ought not to be made :

(6.) Where, from the entire circumstances of the case, the Court is reasonably satisfied that such improvements were not made by the tenant or his predecessors in title :

Provided always, that where it is proved to have been the practice on the holding or the estate of which such holding forms part, for the landlord to assist in making such improvement, such presumption shall be modified accordingly.

6. Any landlord or tenant who may be desirous of preserving evidence of any improvements made by himself or by his predecessors in title before or after passing of this Act, may at any time (subject to the provisions hereinafter contained) file a schedule in the Landed Estates Court specifying such improvements, and claiming the same as made by himself or his predecessors in title, and such schedule so filed shall be *prima facie* evidence that such improvements were made as therein mentioned: Provided always, that notice in writing of the intention to file such schedule, together with a copy thereof, shall be given by the landlord to the tenant for the time being of the holding on which such improvements shall have been made (or by the tenant to the landlord, as the case may be,) within the prescribed time before applying to the Landed Estates Court to file the same; and if the person receiving such notice shall dispute the claim made by such schedule, either wholly or in part, he shall be at liberty within the prescribed time, and in the prescribed manner, to apply to the Civil Bill Court to determine the matter in difference, and in such case such schedule shall not be filed unless or until leave shall have been given to file the same either in its original or in any amended form by the Civil Bill Court; provided also, that before filing any such schedule, proof shall be made in the Landed Estates Court by statutory declaration that the notice hereby required has been duly given, and that no application has been made within the prescribed time by the party receiving such notice to the Civil Bill Court to file such schedule.

7. Where any tenant of a holding does not claim or has not obtained compensation under sections one, two, or three of this Act, and it is proved to the satisfaction of the Court that any such tenant, or that his predecessors in title, on coming into his holding paid money or gave money's worth with the express or implied consent to the landlord on account of his so coming into his holding, the Court shall award to such tenant on quitting his holding, in respect of the sum so paid,

such compensation as it thinks just, having regard to the circumstances of the case; but such tenant shall not be entitled to any compensation under this section when it appears to the Court that such tenant has been given permission by the landlord to obtain such satisfaction from an incoming tenant in respect of the money so paid, or the money's worth so given by him, and on such terms as the Court may think reasonable, and such tenant has refused or neglected to avail himself of such permission; moreover, where the money or money's worth paid or given by any tenant claiming compensation under this section on coming into his holding, was paid or given, in whole or in part, in respect or as covering the value of any improvements on the holding, care shall be taken that such tenant shall not receive compensation in respect of the same improvements under this section and also some other section of this Act; provided that out of any moneys payable to the tenant under this section all sums due to the landlord from the tenant or his predecessors in title in respect of rent, or in respect of any deterioration of a holding arising from non-observance on the part of the tenant of any express or implied covenant or agreement, and also any taxes payable by the tenant due in respect of the holding, and not recoverable by him from the landlord, may, if not deducted under the provisions of section four of this Act, be deducted by or on behalf of the landlord: provided always, that the section shall not apply when such money or money's worth has been paid during the existence of a lease made before the passing of this Act.

8. Where a holding is proved to be subject to the Ulster tenant-right custom or such usage as aforesaid, and where the tenant claims under such custom or usage, and such custom or usage extends to away-going crops, the compensation payable in respect of away-going crops shall be dealt with according to the custom or usage, but the tenant of every other holding, which is not proved to be subject to the Ulster tenant-right custom or such usage as aforesaid, or in respect of which no claim is made under such custom or usage, shall, in the absence of any agreement in writing to the contrary, on quitting his holding, be entitled to all his away-going crops, or at the option of the landlord to be paid the value of the same.

9. For the purposes of this Act, breach of any condition against assignment, sub-letting, bankruptcy or insolvency, shall not be deemed disturbance of the tenant by act of the landlord, and for the purposes of this Act a person who is ejected for non-payment of rent, or for breach of any such condition as aforesaid, and is not disturbed by act of the landlord within the meaning of this Act, shall stand in the same position in all respects as if he were quitting his holding voluntarily; provided that in the case of a person claiming compensation on the determination by ejectment for non-payment of rent of a tenancy existing at the time of the passing of this Act, and continuing to exist without alteration of rent up to the time of such determination, the Court may, if it think fit, treat such ejectment as a disturbance, if the arrear of rent in respect of which it is brought did not wholly accrue within the three previous years, and if any earlier arrear remained due from the tenant at the time of commencing the ejectment, or, if in case of any such tenancy of a holding held at an annual rent not exceeding fifteen pounds, the Court shall certify that the non-payment of rent causing the eviction has arisen from the rent being an exorbitant rent; provided that no tenant who shall have given notice of surrender, and afterwards refuse to give up possession in pursuance of such notice, shall be entitled to any compensation under section three of this Act, though evicted by the landlord in a suit founded on such notice.

10. Any landlord may, after six months' notice in writing to be served upon the tenant, or left at his house, resume possession of a yearly tenant of so much land (not to exceed in the whole one-twenty-fifth part of any individual holding) as he may require for the *bond fide* purpose of erecting thereon one or more labourers' cottages, with or without gardens attached, and such resumption of land shall not, unless the Court shall be of opinion that same was unreasonable, be deemed a disturbance of the tenant within the meaning of this Act, and shall not subject the landlord to any claim for compensation, except in respect of improvements, beyond an abatement of rent proportionate to the annual value of the land so taken by the landlord.

11. For the purposes of this Act a tenant shall be deemed to have derived his holding from the preceding tenant if he has paid to such preceding tenant any money or given to him any money's worth in respect of his holding, or has taken such holding by assignment or operation of law from the preceding tenant; and where a succession of tenants have derived title each from the other, the earlier in such succession shall be deemed to be the predecessor of the later, and the later in such succession shall be deemed to be the successor of the earlier.

12. A tenant of a holding which is not proved to be subject to the Ulster tenant-right custom or such other usages as aforesaid, whose holding, or the aggregate of whose holdings, in Ireland, is valued under the Acts relating to the valuation of rateable property in Ireland at any annual value of not less than fifty pounds, shall not be entitled to make any claim for compensation under any provision of this Act in cases where the tenant has contracted in writing with his landlord that he will not make any such claim.

Section 13 repealed.

14. Where it is proved to the Court that the tenant of any holding held under a tenancy from year to year existing at the time of the passing of this Act is evicted by the landlord by reason of the persistent exercise by such tenant of any right not necessary to the due cultivation of his holding, and from which such tenant is debarred by express or implied agreement with his landlord, such eviction shall not be deemed a disturbance of the tenant by the act of the landlord; or where the tenant of any holding so held as last aforesaid at the time of the passing of this Act is evicted by the landlord by reason of the tenant's unreasonable refusal to allow the landlord, or any person or persons authorised by him in that behalf, he or they making reasonable amends and satisfaction for any injury to be done or occasioned thereby, to enter upon the holding for any of the purposes following, that is to say,

Mining or taking minerals;
Quarrying or taking stone, marble, gravel, sand, or slate;
Cutting or taking timber or turf;
Opening or making roads, drains, and water-courses;
Viewing or examining the estate of the holding and all buildings or improvements thereon;

Hunting, shooting, or fishing or taking game or fish;
Such eviction shall not be deemed a disturbance of the tenant by the act of the landlord, unless it shall be shown that the landlord is persisting in such eviction after such refusal has been withdrawn by the tenant.

15. No compensation shall be payable under the preceding provisions of this Act in respect of—

Exemption of certain lands.

(1.) Any demense land, or any holding ordinarily termed "townparks" adjoining or near to any city or town which shall bear an increased value as accommodation land over and above the ordinary letting value of land occupied as a farm, and shall be in the occupation of a person living in such city or town, or the suburbs thereof, or any holding let to be used wholly or mainly for the purpose of pasture, and valued under the Acts relating to the valuation of property in Ireland at an annual value of not less than fifty pounds, or any holding let to be used wholly or mainly for the purposes of pasture, the tenant of which does not actually reside on the same unless such holding adjoins or is ordinarily used with the holding on which such tenant actually resides: Provided that nothing herein contained shall prevent the tenant of any such holding making any claim which he otherwise would be entitled to make under sections four, five, and seven of this Act; or,

(2.) Any holding which the tenant holds by reason of his being a hired labourer or hired servant; or,

(3.) Any letting in conacre or for the purposes of agistment or for temporary depasturage; or,

(4.) Any holding let and expressed in the document by which it is let to be so let for the temporary convenience or to meet a temporary necessity either of the landlord or tenant, and the letting of which has determined by reason of the cause having ceased which gave rise to the letting.

(5.) Any cottage allotment not exceeding a quarter of an acre.

Definitions.

70. In the construction of this Act the following words and expressions

General definitions shall have the force and meaning hereby assigned to them, unless there be something in the subject or context repugnant thereto:

General definitions

The term "person" or "party" shall extend to and include any body politic, corporate, or collegiate, whether aggregate or sole, and any public company:

The term "county" shall extend to and include county of a city, and county of a town, and a riding of a county, where such county of a city, county of a town, or riding of a county is appointed for civil bill purposes:

The term "prescribed" shall mean prescribed by any rules made in pursuance of this Act:

The term "lease" shall include an agreement for a lease:

The term "settlement" as used in this Act shall include any Act of Parliament, will, deed, or other assurance or connected set of assurances whereby particular estates or particular interests in land are created, with remainders or interests expectant there on; and every estate and interest created by appointment made in exercise of any power contained in any settlement or derived from any settlement shall be considered as having been created by the same settlement; and an estate or interest by way of resulting use or trust to or for the settlor, or his heirs, executors, or administrators, shall be deemed to be an estate or interest under the same settlement:

The term "landlord" in relation to a holding shall include a superior mesne or immediate landlord, or any person for the time being entitled to receive the rents and profits or to take possession of any holding:

The term "tenant" in relation to a holding shall mean any tenant from year to year, and any tenant for a life or lives or for a term of years under a lease or contract for a lease, whether the interest of such tenant has been acquired by original contract, lawful assignment, devise, bequest, or act and operation of law; and where the tenancy of any person having been a tenant under a tenancy

which does not disentitle him to compensation under this Act is determined or expiring, he shall, notwithstanding such determination or expiration, be deemed to be a tenant until the compensation, if any, due to him under this Act has been paid or deposited as in this Act provided :

The term "improvements" shall mean in relation to a holding—

(1.) Any work which being executed adds to the letting value of the holding on which it is executed, and is suitable to such holding; also,

(2.) Tillages, manures or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding.

71. This Act shall not apply to any holding which is not agricultural or pastoral in its character, or partly agricultural and partly pastoral; and the term "holding" shall include all land of the above character held by the same tenant of the same landlord for the same term and under the same contract of tenancy.

Short title.

72. This Act may be cited for all purposes as "The Landlord and Tenant (Ireland) Act, 1870."

Application of Act

73. This Act shall apply to Ireland only.

Sections 6 and 7, Land Law (Ireland) Act, 1881 (44 and 45 Vict. C. 49) embody the present law as regards compensation for tenants, improvements in Ireland :—

"There shall be repealed as much of section three of the Landlord and Tenant (Ireland) Act, 1870, as provides for the scale of compensation, and so much of the same section as declares that in no case shall the compensation exceed the sum of two hundred and fifty pounds, and so much of the same section as declares that a tenant in a higher class of the scale may at his option claim compensation under a lower class, and so much of the same section as prohibits tenants of holdings valued at such sums as are in the said section mentioned, and making such claims for compensation for disturbance as are in the said section mentioned from being entitled to make a separate or additional claim for improvements other than permanent buildings and reclamation of wasted land, and the said section three shall hereafter be read as if from such section were omitted the words "for the loss which the Court shall find to be sustained by him by reason of quitting his holding."

* So that the said section shall be read as providing that the tenant therein mentioned shall be entitled to such compensation as the Court, in view of the circumstances of the case, shall think just, subject to the scale of compensation hereinafter mentioned. The compensation payable under the said section in the case of a tenant disturbed in his holding by the act of a landlord after the passing of this Act, shall be as follows in the case of holdings :—

Where the rent is thirty pounds or under, a sum not exceeding seven years' rent.

Where the rent is above thirty pounds and not exceeding fifty pounds, a sum not exceeding five years' rent.

Where the rent is above fifty pounds and not exceeding one hundred pounds a sum not exceeding four years' rent.

Where the rent is above one hundred pounds and not exceeding three hundred pounds, a sum not exceeding three years' rent.

Where the rent is above three hundred pounds and not exceeding five hundred pounds, a sum not exceeding two years' rent.

Where the rent is above five hundred pounds, a sum not exceeding one year's rent.

Any tenant in a higher class of the scale may, at his option, claim compensation under a lower class, provided such compensation shall not exceed the sum

to which he would be entitled under such lower class on the assumption that the rent of his holding was reduced to the sum (or where two sums are mentioned, the higher sum) stated in such lower class.

From and after the passing of this Act, the thirteenth section of the Landlord and Tenant (Ireland) Act, 1870, shall be, and the same is hereby, repealed.

Amendment of Law as to Compensation for improvements.

Section 7.—A tenant on quitting the holding of which he is tenant, shall not be deprived of his right to receive compensation for improvements under the Landlord and Tenant (Ireland) Act, 1870, by reason only of the determination by surrender or otherwise of the tenancy subsisting at the time when such improvements were made by such tenant or his predecessors in title, and the acceptance by him or them of a new tenancy.

Where in tracing a title for the purpose of obtaining compensation for improvements, it appears that an outgoing tenant has surrendered his tenancy in order that some other person may be accepted by the landlord as tenant in his place, and such other person is so accepted as tenant, the outgoing tenant shall not be precluded from being deemed the predecessor in title of the incoming tenant by reason only of such surrender of tenancy by him.

The Court, in adjudicating on a claim for compensation for improvements made before any such change of tenancy or of tenants, shall take into consideration all the circumstances under which such change took place, and shall admit, reduce, or disallow altogether such claim as to the Court may seem just.

A flax-scutching mill, otherwise suitable to the holding on which it is erected, shall not be deemed to be unsuitable to the holding on which it is erected, by reason only that it is available for purposes beyond those of the holding on which it is situate.

76. (1) For the purposes of this Act, the term “improvement” of “improvement,” used with reference to a raiyat’s holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

Consistent with the purpose for which it was let:—Not only should the work add to the value of the holding, but it must be consistent with the purpose for which it was let.

“The principle of giving protection to the landlord against improper usage of the land by the tenant was generally recognized in Europe.” (*His Excellency the Viceroy, Debate on the Bill.*)

“The raiyat ought not to divert the land from the purposes for which it was let.” (*Sir Stuart Bayley, Debate on the Bill.*)

In *Anund Kumar Mookerjee v. Bissonath Banerjee*, 17 W. R., 416, it was held that no tenant taking land is entitled to change the nature of that land from what it was when he got it, or make a permanent alteration in the landlord’s property; in *Tarini Churn Bose v. Ramjee Pal*, 23 W. R. 298, the Judges held that continual use of land for twenty-five years for making bricks, raises a strong presumption of acquiescence on the part of the landlord; where a tenant has been guilty of a breach of duty in the use of his land, such as making a tank in it, building on it improperly, or changing the character of the

cultivation, such conduct does not necessarily operate as a forfeiture so as to render the tenant liable to ejectment. "The statutory right of occupancy cannot be extended so as to make it include complete dominion over land subject only to the payment of rent liable to enhancement. The landlord is still entitled to insist that the land shall be used for the purposes for which it was granted, and, although a liberal construction may be adopted, it cannot extend to a complete change in the mode of enjoyment"—(*Baboo Lall Sahoo v. Deonarain Singh*, I. L. R., 3 Cal., 781; 2 C. L. R., 295.) In *Kadumbini v. Nobin Chunder*, 2 W. R., 15, it was held that making holes in land for providing earth for bricks or allowing others to do so would be doing permanent damage to the landlord's property. The tenant of an agricultural holding planted his jote with mango trees without the consent of his landlord, thus changing the character of the land. More than three years afterwards the landlord sued for a mandatory injunction to have the mango trees removed, it was held that, having stood by and allowed the tenant to spend his labor and capital in the land without taking any action in the matter, the landlord was not entitled to a mandatory injunction—(*Mynas Misser v. Rafikun*, I. L. R., 9 Cal., 609.)

Directly for its benefit:—The following explanation is given in the Central Provinces Tenancy Act (s. 3, cl., 8): "Explanation 2:—A work which benefits several holdings may be deemed to be with respect to each of them, an improvement."

76. (2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:—

- (a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;
- (b) the preparation of land for irrigation;
- (c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;
- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;
- (e) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and
- (f) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

Clauses (a) to (c) are the same as in the Land Improvement Loans Act XIX B.C. of 1883. Clauses (b) and (f) have no place in the North-Western Provinces Rent Act XII of 1881 or the Oudh Rent Act XIX of 1868. Clause (b) has been enacted with an eye to the Bengal Irrigation Act, and the reason of clause (f) is apparent.

Construction of wells and tanks:—This supersedes *Monindra Chunder v. Munooruddin*, 8 B. L. R., App. 40.

Water Channels:—The Bengal Embankment Act defines a *Water-course* to “include a line of drainage, weir, culvert, pipe, or other channel for the passage of water, whether natural or artificial.”

Drainage:—*Drainage work* under the Irrigation Act “means any work in connection with a system of irrigation which has been or may hereafter be made or improved by the Government for the purposes of the drainage of the country, whether under the provisions of Part IV of this Act or otherwise, and includes escape-channels from a canal, dams, weirs, embankments, sluices, groins and other works connected therewith, but does not include works for the removal of sewage from towns.”

Protection from flood:—These are embankments and flood embankments under the Irrigation Act:—*Flood-embankment* “means any embankment constructed or maintained by the officers of Government in connection with any system of irrigation-works for the protection of lands from inundation, or which may be declared by the Lieutenant-Governor to be maintained in connection with any such system; and includes all groynes, spurs, dams, and other protective works connected with such embankments.” And an embankment under the Embankment Act “includes every bank, dam, wall and dyke, made or used for excluding water from, or for retaining water upon, any land, and every sluice, spur, groyne, training wall or other work annexed to a portion of any such embankment, and every bank, dam, dyke, wall, groyne, or spur, made or erected for the protection of any such embankment or of any land from erosion or overflow by or of rivers, tides, waves or waters; and also all buildings intended for purposes of inspection and supervision.”

Clearance—will not include the cutting down of valuable trees. Compare section 23 of the Act; nor the converting of an orchard or garden into an arable land. See *Gopeckissey Gossain v. Doulut Mir*, 1 W. R., 156, where the lease reserved the right in all timber, then growing or hereafter to grow, to the landlord, and the tenant sold the trees. In *Ruttunjee Eduljee v. Collector of Tana*, 10 W. R., P. C., 13, the Privy Council observed: “The trees on the land, and the right to cut down and sell those rights was incident to the proprietorship of the land.”

Erection of a suitable dwelling house:—As to the raiyats’ power of erecting a suitable house for himself and his family, see notes under section 20, *bastoo lands*. But a lessee cannot build on land held by him for cultivation—(*Jugut Chunder v. Eshan Chunder*, 24 W. R., 220.)

76. (3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act, if it substantially diminishes the value of his landlord’s property.

77. (1) Where a raiyat holds at fixed rates or has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make

Right to make improvements in case of holding at fixed rates and occupancy-holding

it, unless it affects another holding or other holdings under the same landlord.

See notes under section 76.

78. If a question arises between the raiyat and his landlord—

Collector to decide question as to right to make improvement, &c.

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement, the Collector may, on the application of either party, decide the question, and his decision shall be final.

79. (1) A non occupancy-raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

"We have in section 79 provided that a non-occupancy raiyat shall be entitled to construct a well for the irrigation of his holding. A well constructed under this provision will be an improvement within the meaning of the Act, and the raiyat will, on being ejected, be entitled to receive compensation for it. The high importance of facilitating and encouraging the construction of all works of irrigation in this country, with a view to the prevention of famine, points to the necessity of this." (S. C. B. III.)

80. (1) A landlord may, by application to such Revenue officer as the Local Government may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted in a tenant making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

This section should be read with section 33 *ante*.

The Local Government has framed the following rules under this section:—

"1. An application for the registration of a landlord's improvement may be presented to the Collector of the district or to the officer in charge of the sub-division in which the land benefited by the improvement is situated, or to any Assistant or Deputy Collector who may be especially appointed by the Government to receive such application. It shall, as far as practicable, be in the form specified in Schedule I appended to these rules.

"2. The officer receiving the application may, if he thinks fit, require the application to present as many copies of the application as there are tenants mentioned in column 7 of the application, or as there are villages mentioned in column 2, and he may, as the case may be, either forward by registered letter copies to the tenants whose names are specified, or may give notice to the tenants by causing a copy to be fixed up in the presence of not less than two persons in some conspicuous place in every such village. In either case he shall fix a date for hearing objections to the application, and shall cause that date to be notified to the parties concerned, either by entering it in the copies forwarded by registered letter or by proclaiming it by beat of drum, and by posting, in the presence of not less than two persons, a notice declaring it in each village. The expenses of such service shall be borne by the applicant for registration.

"3. The officer may make over the application to any of his subordinates, not being below the rank of a cancongoc, for local enquiry and report, and shall, in that case, fix a date for hearing the report, and shall cause such date to be notified to the parties concerned in the manner set forth in Rule 2. The enquiry shall be limited to the ascertainment of the fact, whether the alleged improvement is of such a nature as to come within the meaning of section 76 (2), Bengal Tenancy Act, or not.

"4. On the date so fixed, or on any date to which the proceedings may be adjourned, the officer shall hear summarily such of the parties and their witnesses as may attend, and shall consider any report submitted to him under Rule 3. He shall then decide whether the work is an improvement as defined in section 76 (2), Bengal Tenancy Act, and whether the landlord is entitled to register it, and shall accordingly order it to be registered or refuse registration.

"5. Nothing hereinbefore contained shall preclude the officer receiving the application from holding a local enquiry in person, and from ordering the improvement to be registered, or refusing registration in accordance with the result of the enquiry so held.

"6. If an order refusing to register an improvement is passed by an officer lower in rank than the Collector of the district, such order shall not take effect until confirmed by the Collector of the district."

The form in the Schedule referred to in Rule (1) is as follows:—

Application under Section 80, Act VIII of 1885.

To

THE COLLECTOR OF

The application of _____, son of _____, resident of _____, for registration of an improvement under Section 80 of the Bengal Tenancy Act, VIII of 1885.

1	2	3	4	5	6	7
Name of pergunnah and estate in which improvement has been effected.	Name of village in which improvement effected.	Nature of applicant's interest in land.	Nature of improvement.	By whom executed, and at whose expense.	When executed.	Names of tenants benefited, if not more than five in number.

A. B.,
Landlord.

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in any subsequent proceedings between the landlord and tenant or any persons claiming under them.

The Local Government has framed the following rule under sub-section (1):—

Section 81 (1):—"Evidence relating to any improvement under this sub-section shall be recorded by the Revenue-officer specified in Rule 1 of this Chapter (Rule 1 under sec. 80) who shall exercise the powers of a Civil Court in the trial of suits, and shall be guided by the provisions of sections 182 and 184 of the Civil Procedure Code."

Section 182 of the Civil Procedure Code requires that the evidence shall be taken down in writing in the language of the Court by, or in the presence and under the personal direction and superintendence of, the Judge, generally in the form of a narrative, and, when completed, shall be read over, and, if necessary, corrected and signed by the Judge. Section 184 prescribes that when the

evidence is not taken in writing by the Judge, he shall make a memorandum of the substance of the evidence of each witness, and that the memorandum shall be written and signed by the Judge.

82. (1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the 2nd day of March 1883, and the commencement of this Act, shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit and determining the qualifications of those assessors and the mode of selecting them.

Section 178, sub-section (1), clause (d), provides that nothing in any contract between a landlord and a tenant made *before or after* the passing of this Act, shall take away the right of a tenant as provided by this Act to claim compensation for improvements.

The 2nd day of March 1883 is the day on which leave was obtained to introduce the Bengal Tenancy Bill into the Council.

No rules have yet been framed by the Local Government under this subsection. The Committee appointed to consider and advise on the form of the rules under this Act remarked :—" With regard to section 82, it may be permitted to us to hope that cases of ejectment will be rare. It is probable, too, that the amount of compensation awardable in such cases will not ordinarily be very large. It seems to us a matter of some difficulty to specify in a rule the qualifications of persons whose assistance would be useful to the Court; and we are unwilling to add to the costs of the trial by proscribing a procedure

which would involve an expenditure incommensurate with the amount of the compensation. If it should be found hereafter, that the Courts experience a practical difficulty in the decision of these cases, and express a wish for the appointment of assessors, the question of making a rule may be further considered."

83. (1) In estimating the compensation awarded under the last foregoing section for an improvement, Principle on which compensation is to be estimated. regard shall be had—

- (a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;
- (b) to the condition of the improvement, and the probable duration of its effects;
- (c) to the labour and capital required for the making of such an improvement;
- (d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and
- (e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

* The North-Western Provinces, Act (XII of 1881) provides that such compensation may at the option of the landlord be made (1) by payment in money; (2) by a rent to be charged on the land; (3) by the grant of a beneficial lease; or (4) partly by one or more, and partly by the others or other of the same ways. This sub-section empowers the Court to direct payment otherwise than in money, when both the landlord and the raiyat agree, but not otherwise.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, Acquisition of land for building and other purposes. and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose, having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose,

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

"We have inserted a new section (84) giving power to landlords to acquire by compulsory sale, through the Civil Court, and at a price to be fixed by the Court, any land in their estate required for building purposes or for religious, charitable or educational objects. The necessity of some such power, especially with a view to provide building-sites either for new tenants or in cases of dilution, has been strongly urged upon us. We have guarded the section against abuse by requiring the certificate of a Collector as to the sufficiency of the reason before action can be taken under it." *Vide* section 144 *post*. (S. C. R.)

Sub-letting.

85. (1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

(2) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(3) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

"We have inserted a section (85) providing that if a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord, unless made with his landlord's consent; that a sub-lease by a raiyat shall not be admitted to registration, if it purports to create a term exceeding nine years (seven years was the longest term for which an occupancy-raiyat could sub-let under section 38 of the Bill No. II.); and that where a raiyat has without the landlord's consent granted a sub-lease by an instrument registered before the commencement of the Act, the sub-lease shall not be valid for more than nine years from the commencement of the Act." (S. C. B. III.)

The Legislature here recognizes the right of a raiyat to sub-let his land; so under the old law an occupancy raiyat could sub-let his land without incurring forfeiture on that account—(*Kalee Kishore v. Ram Churan*, 9 W. R., 344; *Haran Chunder v. Mookta Sundari*, 10 W. R., 113; *Jameer Gazee v. Goneye Mundal*, 12 W. R., 110; *Khosal Mahomed v. Joynooddeen*, *Ib.*, 451). Compare also 1 B. L. R., A. C., 81; but he cannot by sub-letting alter the character of his holding and convert it into an under-tenure—(*Karoo Lal v. Luchmeepat*, 7 W. R., 15; *Hureehur v. Jadu Nath*, *Ib.*, 114). If a man take land and at once sub-let it, he will be a middle-man and cannot acquire

a right of occupancy—Marsh., 479. But if having once acquired a right of occupancy by cultivating or holding, he afterwards sub-let, such right of occupancy was not thereby forfeited. Under the wordings of the present sections (20 and 21), as well as under the Full Bench decision of (*Narendra Narain v. Ishan Chunder*, 13 B. L. R., 274, it is doubtful if an occupancy raiyat can retain his right to the holding after sub-letting.—*Vide* notes under section 20, and section 25. The jummai rights of a *kurpha* under-tenant are not transferable without the consent of the landlord—(*Bonomali v. Koylash Chunder*, I. L. R., 4 Cal., 135). When a lessor gives his lessee power to sub-let, and the latter sub-lets, the sub-lessee obtains rights against both of which he cannot be deprived without his consent—(*Nehaloonissa v. Dhunnoo Lal*, 13 W. R., 281). Where a lessee sub-lets land, the sub-lessees can have no more right to use the land in contravention of the original lease than their lessor had—(*Mo-nindra Chundra v. Moneeruddin*, 20 W. R., 230.) A lessee cannot make a sub-lease for a longer time than his own lease—(*Hurish Chunder v. Sree Kaleo*, 22 W. R., 274). Nor can a farmer or lease-holder do so to the prejudice of the owner—(*Raneo Shurut Sundari v. Charles Binny*, 25 W. R., 347.) Where a sub-lease specifies no term of tenancy, it cannot be construed to have effect beyond the interest of the grantor—(*Hurish Chunder v. Sree Kaleo*, 22 W. R., 274).

The section speaks of a raiyat, which includes a non-occupancy raiyat as well. Under clause (b) of section 44, however, it appears that the landlord can protect himself against sub-lease by contract. The section seems to have been borrowed from clause (j) of section 108 of the Transfer of Property Act.

Shall not be admitted to registration.—This is the only section which gives a quasi-judicial power to the registering officer. This section applies where a raiyat sub-lets, but not where a tenure-holder or any other superior holder sub-lets.—See sections 4 and 5 *ante*.—A raiyat may be a raiyat at fixed rates or an occupancy raiyat or a non-occupancy raiyat. A registering officer has no right to take evidence and determine the status of the lessor under this section, but he may ask him as to whether he is a raiyat or a tenure-holder in order to determine his jurisdiction and the answer whatever it is must be accepted by him as absolute. If a raiyat sub-lets without fixing the term of his sublease, the registering officer will question him and then admit or reject the document, as the sub-lease is for nine years or more. In such cases the reasons of admission should be recorded. The following rules have been circulated by the Registration Department under this section :

1. A document presented for registration under sections 12, 18, 85 and 175 shall be first examined with reference to registration rule 42, and next with reference to the particular section of the Tenancy Act under which it is presented.

2. In certifying its admissibility to registration, the registering officer shall quote registration rule 42 as well as the particular section of the Tenancy Act under which it is admitted. Thus "Admissible under rule 42; also under section so-and-so of the Bengal Tenancy Act, VIII of 1885. Correctly stamped under The Indian Stamp Act, Schedule , No. .

3. When a sublease executed by a raiyat purporting to create a term exceeding nine years is presented for registration, it shall be returned at once with a note to the following effect recorded on its back, *viz.*, "Not admissible under sub-section 2, section 85 of the Bengal Tenancy Act, VIII of 1885. The note shall be signed, sealed, and dated by the registering officer.

Surrender and Abandonment.

86. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

Surrender.

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat has surrendered his holding, the Court shall in the following cases for the purposes of sub-section (2) presume, until the contrary is shown, that such notice was so given, namely:—

(a) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(b) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(7) Save as provided in the last foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

The Old Act:—The former law was section 20, Act VIII (B.C.) of 1869.

“Any raiyat, who desires to relinquish the land held or cultivated by him, shall be at liberty to do so, provided he gives notice of his intention in writing, to the person entitled to the rent of the land or his authorized agent, in districts or parts of districts where the Fasli year prevails, in or before the month of Jeit, and in districts or parts of districts where the Bengali year prevails in or before the month of Pous of the year preceding that in which the relinquishment is to have effect. If he fails to give such notice, and the land is not let to any other,

person, he shall continue liable for the rent of the land. If the person entitled to the rent of the land, or his agent, refuse to receive any such notice, and to sign a receipt for the same, the raiyat may make an application on plain paper to the Collector in whose jurisdiction the land is situated, who shall thereupon cause the notice to be served on such person or his agent in the manner provided in section 14."

Application of the Section :—The section speaks of raiyats only, and not

It does not apply to tenants other than raiyats.

of tenants in general—see sections 3, 4 and 5. Hence a tenure under a dur-mourosi mukurari lease of land which is not let for agricultural purposes cannot be put an end to by a mere relinquishment on the part of the lessee, although after notice to the landlord; the principle laid down in the case of *Hecralal Pal v. Neelmony Pal*, 20 W. R., 383, where it was held that a patnidar cannot of his own option relinquish his tenure, is applicable to all intermediate tenures between the zemindar and the cultivator of the soil, except those held on farming leases—*Jadoo-nath v. Schoone, Kilburn & Co.*, 1 L. R., 9 Cal., 671; 12 C. L. R., 343). In *Hiralal Pal v. Nilmani Pal*, 20 W. R., 383, it was observed: "The point which we reserved for consideration in this case is whether it is optional with a patnidar to surrender the patni, which he holds, at any time, and to plead such surrender in answer to a suit for rent. We are clearly of opinion that, whether or not, the Civil Court might, upon sufficient ground, give relief in a suit brought to dissolve a contract between the zemindar and his patnidar, it is certainly not open to a patnidar of his own choice to throw up the patni, and, by so doing, escape his liability to pay rent. We do not say that the contract is indissoluble, because many circumstances might arise in which the interference of a Court of Justice might fairly be invoked to put an end to it; but the dissolution of such a contract must, we think, be an act of the Court and the result of proper enquiry, and cannot be taken by the patnidar alone and pleaded in answer to a suit for rent." So as regards farming leases, it was held in *Raja Kishen v. Sankari Dasi* (7 Sel. Rep., 174, o. c., 205, n. e.), that if the landlord took steps to increase the rent, the tenant had a right to surrender the lease, even if perpetual, and avoid liability.

This section does not apply to cases where the raiyat has entered into a

A raiyat not bound by a lease or other agreement for a fixed period

lease for a specific term; where, for instance, a raiyat had taken a lease, it was decided that he could not relinquish his holding during the currency of the lease—(*Kashoo Sing v. Messrs. Onraet and Grant*, 5 W. R., Act X, 80; *Tiluk Patuk v. Mahabir Panday*, 7 B. L. R., App., 11; 15 W. R., 454; *Baboo Dwarka Dass v. Gopal Dass*, 1 Agra Rev. Ap., 22). But a perpetual contract by a man on the part of himself and his heirs, and reciting that he or his heirs shall never relinquish the jote cannot operate against the law, which says that any raiyat may relinquish his jote if he does so in a legal manner—(*Gopal Chowdry v. Tarini Persad* 9 W. R., 89). This decision possibly holds good under the present section, for a perpetual contract is not an agreement for a fixed period—*vide* section 178. Sub-section (3), clause (c) of that section provides that nothing in any contract made between a landlord and a tenant after passing of this Act, shall take away the right of a raiyat to surrender his holding in accordance with this section. Where a joint lease was given to many persons with an entirety and equality of interest among the tenants, the resignation of

Surrender by a co-sharer or by one not having full rights.

some of the joint lessors does not necessarily operate to void the lease—(*Mohim Chunder v. Pitambur*, 9 W. R., 147). Where a member of a joint family is registered

as jotedar in a zemindar's sherista, not as for himself only, but as manager for the family, his relinquishment of the jote is not sufficient in law to authorize the zemindar to make arrangements with any others he pleases—(Bykunta Nath v. Bissonath, 9 W. R., 268). An *istafa* given by a Hindu widow having infant sons cannot operate to destroy the title of the infants—(Synd Wahid Ali v. Gour Mohan, 1 Hay, 553.) A raiyat cannot relinquish a

portion of his jote, keeping that portion only which may suit his convenience. He may either retain the whole or throw up the whole in conformity with the provisions of this section. But as long as he retains any portion of his jote, he is liable for the rent of the whole—(Saroda Sundari v. Hazee Mahomed, 5 W. R., Act X, 78). But when a raiyat, holding a considerable quantity of land, wishes to relinquish a portion, he must specify in his notice what portion he relinquishes in order to relieve himself of liability to pay rent—(Habela Sircar v. Doorga Kant, 11 W. R., 456).

Notice of intention to surrender:—As notice is required before relinquishment, so the relinquishment must follow the notice. It is the relinquishment of the land and not the notice which relieves the raiyat from liability—(Nobin Chunder v. Lukhi Pria, 1 W. R., 20; 2 Board's Rep., 200.) A

Verbal notice sufficient. verbal notice is sufficient under the present law, and it is so under the old law too—(Mahomed Gazee v. Sun-

kurlal, 11 W. R., 53.) The mere use of the words “অনাকে বিলি কর” in conversation by the tenant, when called upon by the zemindar to pay increased rent, were held to be insufficient to constitute a relinquishment—(Bonomali v. Delu Sirdar, 24 W. R., 118.) Where a landlord served a notice on an *ootbandi* raiyat that, unless he paid an enhanced rent for the ensuing year, he was to quit the land, and the raiyat thereupon intimated to the landlord's agent his intention to relinquish the land, it was held that there was sufficient compliance with the provisions of section 20, Act VIII of 1869 B.C.—(Kenny v. Ishur Chunder, Sp. W. R., Act X, 9.) Where a tenant is found to have taken steps required by law in furtherance of his intended relinquishment, it is for the landlord to prove his continued possession notwithstanding. But where it is found that the tenant has not gone through the necessary steps, it will be for him to prove that the landlord took possession of the land and enjoyed the profits by holding it *khas*, or by letting it to others—(Erskine v. Ram Coomar, 8 W. R., 221.) A raiyat is not required to give any notice under this section in a case where the raiyat holds under a lease which was for a limited period, which period has expired. After the expiry of the lease he has no right to hold, and is therefore perfectly justified in giving up possession. And a landlord claiming rent from such raiyat for a period after the expiry of his lease is bound to prove that the latter held on subsequently to the terms of the lease—(Tilak Puttuk v. Mahabir Pandey, 15 W. R., 454). A tenancy which is to continue year by year is a continuing tenancy so long as the parties are satisfied; and, though terminable at the option of either party at the end of any year, is not *ipso facto* terminated at the end of every year. The tenancy shall not terminate, and the raiyat shall continue liable for rent unless he relinquishes it under the provisions of this section—(Maloddee Noshyo v. Bullubee Kant, 13 W. R., 190).

The present law enjoins three months' notice previous to the end of the agricultural year [sub-sections (1) and (2) should be read together], while the old law enjoined Jyete Fuali or Pous Bengali to be the month when the notice ought to be served. “Agricultural year” is defined in clause 11 of section 3.

The notice under the old law might be served through the Collector. The new law takes off his jurisdiction and vests it upon the Civil Court, but in both cases it is optional with the party to serve the notice through these functionaries or otherwise. So it was held under the old law that the section did not imperatively require an application for service of notice of relinquishment of land to be made to the Collector. The non-service of the notice by the Collector cannot affect the rights of the tenant, if he can prove that previous to his application to the Collector, he had given actual notice directly to the landlord himself, or to his authorized agent. The time referred to in this section has reference to the service of the original notice which the tenant is required to give without the intervention of the Collector—(*Erskine v. Ram Coomar*, 8 W. R., 221.) So under the present law it is made more distinct that the notice need not as a matter of course be served through the Civil Court. If, however, it is so done, and no previous notice is given to the landlord directly, the notice must be served through the Civil Court so as to give three months' time to the landlord, because sub-section (2) contemplates that the landlord must receive the notice of the intention to surrender three months before. The raiyat may, however, give three months' previous notice directly to the landlord, and then complete it by serving it through the Civil Court again.

The Local Government has, under the powers given by section 189, framed the following rule about the service of notice under sub-section (2) and sub-section (4):—

"Section 86, (2) and (4).—If the raiyat elects to proceed under the second sub-section of this section, he may personally serve a written notice of his intention to surrender on his landlord; but if he elects to proceed under the 4th sub-section of the section, the notice of the raiyat's intention to surrender shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court."

There is a difficulty, however, attached to the words "Civil Court."

Civil Court.

There are various grades of such Courts, and through which Court (the Sub-Judge, District Judge, or the Munsiff) is the notice to be served, and how is the pecuniary limit of such Courts to be determined in cases of notice? If the jurisdiction of the Courts be determined by the valuation of the holding, the result will be very intricate. Possibly the amount of the rent of the holding would be the better test. But see section 144, *post*. As the expression "Civil Court" has not been defined in this Act, we must read it with sections 15 and 16 of the Civil Procedure Code, and with the provisions of the Bengal Civil Courts' Act.

An application for service of notice of relinquishment is exempt from court-fee duty under clause 21, section 19 of Act VII of 1870.

Presumption of a notice :—Sub-section 3 contains a presumption that the notice was given. The reason of the presumption was thus explained: "The question is—when the raiyat had surrendered, is he to be held liable for the payment of the next year's rent? If he has given three months' notice, the answer is no; if he has not given it, the answer is yes; but we look to the object with which three months' notice is required, and we say if he has left the village, or if he has exchanged his holding for another, then the landlord has already received the information which the notice is intended to secure, and it is here that the presumption comes in. The presumption is not a presumption of surrender,

but of service of notice. The raiyat will then be able to say that he gave notice, because the landlord has let him another piece of land in the same village." (*The Hon'ble Sir Stewart Bayley in Council.*)

Collusive surrender to defeat strangers:—The Select Committee reported :—"In dealing with surrender and abandonment, the only changes made by us which need here be noticed, are the provisions which we have inserted to check collusive surrender or abandonment in fraud of the rights of third parties. The necessity for this was brought to notice in para. 69 of the Bengal Government's letter of 15th September, where it is shown that raiyats not unfrequently sub-let the whole or a portion of their holdings in consideration of a large bonus for a term of years. To leave the interests of sub-lessees in such cases entirely at the mercy of the sub-lessor in collusion with his landlord, would do serious practical harm. We have therefore provided [section 86 (6)] that the surrender of a holding which is subject to a registered incumbrance, shall not be valid without the consent of the incumbrancer and the landlord, and in case of abandonment, we have provided [section 87 (4)] that the sub-lease shall only be avoided after the sub-lessee has had the opportunity of taking over for the unexpired period of his sub-lease the full rights and liabilities of his lessor in regard to the rent of his entire holding. These provisions appear to us to present the only method by which protection can be given to the sub-lessee without injury to the landlord, or without risking the conversion of these sub-leases into permanent transfers. In the case of sale, in execution of a decree for rent, the sub-lessee has the same protection as other incumbrancers under Chapter XIV."

87. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

Abandonment.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause the notice to be published in such manner as the Local Government, by rule, directs.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

tenant, shall be made by the acre, unless the Court or Revenue officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purpose of the suit or proceeding.

(3) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

The old Act:—Section 41 of Act VIII of 1869 B.C., and section 11 of Act VI of 1862 B.C., had: "All measurements made under this Act shall be made according to the standard pole of measurement of the pergunnah in which the land is situated."

"We have in section 92 substituted the acre for the standard bigha as the official standard of measurement, and have empowered a Court or Revenue officer to direct, where such a course may seem more convenient, that a measurement shall be made by any other specified standard."—(*S. C. B. T. III.*)

The Rent Commission observed:—"The length of the local standard pole, with which a measurement of land should be made, is a fertile subject of dispute and litigation. It is not uncommon for a landlord to make a measurement of his lands with a pole of his own selection, the actual length of which must be a subject of doubt upon the evidence, while the raiyats concerned aver not only that the standard pole of the pergunna is different, but that during the measurement a third pole has occasionally been substituted for that which the landlord claims to be the standard. In order to avoid these uncertainties we have adopted acre to the standard of measurement."

No rules have yet been framed by the Local Government under sub-section (3). The Committee appointed to consider and advise on the form of the rules under this Act, observed: "The definition of local standards of measurement, under section 92 (3), is a matter which demands very careful previous enquiry, and the information at our disposal does not justify us in recommending that the Government should put forward any declaration on the subject at present."

Decisions under the old Act:—Formerly there had been conflicting decisions as to the power of the Collector to decide, in cases of dispute, what was the standard pole of the measurement of the pergunnah; but it is now decided by a majority of the Full Bench (Couch, C.J., Bayley and L. S. Jackson, J.J., dissenting) that where there is a dispute solely on the ground that the pole with which the measurement is attempted to be made, is not the standard pole of the measurement of the pergunnah, and the parties are at issue as to what is the length of the standard pole, the Collector has jurisdiction to enquire into and decide as to what is the true length of the standard pole—(*Srimati Manmohini Ohawdrain v. Prem Chand*, 6 B. L. R., 1; 14 W. R., F.B., 5). Under the present section, the same question will arise in the conversion of the acre to the local measure under sub-section (2). In determining the question of the length of the standard pole, due credit must be attached to the Canoongoe papers which have always been recognised to be of great weight in questions connected

with pergunnah rates, standards of measurements and similar statistics; and it is no ground for rejecting these papers, that the local *hat* does not correspond with the English cubit of 18 inches: for the *hat* varies in length in different pergunnahs—(Nund Dundpat v. Tara Chand Prithihari, 2 W. R., Act X, 13). It sometimes indeed happens that there are two different standards of measurement in the same pergunnah; and when this is the case, the standard which is current in a particular locality or *tuppa* must be followed—(Bhagabati Churun v. Tameeruddin Moonshi, 1 W. R., 225; Sarbanund Pandey v. Ruchia Pande, 4 W. R., Act X, 32):

Managers.

“Sections 142 to 148, relating to the appointment of a manager on behalf of co-owners of an estate or tenure, are taken, with slight alterations in the drafting, from the Bill framed by the Rent Law Commission. Their history and the nature of the provisions they contain will be best seen by an extract from the Commissioners' report. After describing at some length (paragraph 134) the complications, litigation and even riots which arise when co-owners of an estate or tenure (or, as they are sometimes termed, co-parceners) quarrel among themselves, and the grievous harassment, to which the tenants are exposed, in such cases, the report proceeds as follows:—

‘135. The necessity of a remedy for this state of things was felt at an early period of British administration, and in 1812 it was enacted that, inasmuch as inconvenience to the public and injury to private rights had been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, whenever sufficient cause shall be shown by the Revenue-authorities, or by any of the individuals holding an interest in such estates, for the interposition of the Courts of Judicature, it shall be competent to the Zilla Judges to appoint a person duly qualified and under proper security to manage the estate; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate (Regulation V of 1812, section 26). The Judge was also competent, upon the representation of the Revenue-authorities, or of any such person as aforesaid, to remove any manager so appointed (*ib.* section 27). A subsequent Regulation (V of 1827) enacted that, when the Zilla Court thought it just and proper under the provision of that Regulation to provide for the administration or management of landed property, it should issue a precept to the Collector, directing him to hold the estate in attachment and appoint a person for the due care and management thereof, under good and adequate security for the faithful discharge of the trust in a sum proportionate to the extent thereof. The reference in Regulation V of 1827 to Regulation V of 1812 was repealed by Act XVI of 1874, so that it is not now competent to a District Judge to send a precept to the Collector directing him to provide for the management of an estate belonging to a joint undivided family. The fragment of Regulation V of 1812 which is still in force is incomplete, and in consequence almost inoperative.

‘136. Such being the present state of the law, a majority of us have thought that this fragment will be repealed and a complete set of effective provisions substituted therefor. We have accordingly enacted that, when co-parceners, who jointly own an estate, tenure or under-tenure, disagree as to the joint management thereof, and in consequence there has ensued, or is likely to ensue, (a) inconvenience to the public, (b) injury to private rights, the District Judge may, upon the application in case (a) of the Collector, and in case (b) of any one having an interest in such estate, tenure or under-tenure, direct a notice

to be served upon the co-parceners, calling upon them to show cause why they should not appoint a common manager. If the co-parceners do not, within a month, show cause why they should not appoint a common manager, the District Judge may direct them to do so. If they fail to obey that direction, the District Judge may either appoint a manager, or direct that the estate, tenure or under-tenure be managed by the Court of Wards, if it is willing to undertake the charge. We have thought it advisable to give the co-parceners an opportunity of appointing a manager of their own selecting, before the District Judge proceeds virtually to depose them. When the Court of Wards undertakes the charge, it will govern itself by the provisions of *The Court of Wards Act, IX B.O. of 1879*. It is discretionary with the Court of Wards to undertake the charge or not. A majority of us have thought it advisable to render this system of management possible, as there may be cases in which no other management will be available. Mr. O'Kincaly doubts if it is advisable to extend the exceptional jurisdiction of the Court of Wards and empower it to manage the estates of persons who happen to disagree amongst themselves. When the District Judge appoints a manager, he is empowered to settle his remuneration, and the manner of it, whether, that is to say, by a fixed salary or a percentage of the collections. He is also empowered to require reasonable security for the proper discharge of the duties of the office. The manager is authorized to exercise the same powers as the co-parceners jointly might, but for his appointment, have exercised. He is required to keep regular accounts and to allow the co-parceners to inspect and take copies of them. He may be removed upon the application of the Collector, or of any person interested in the estate, tenure or under-tenure. The District Judge may at any time direct that the management be restored to the co-parceners, if he is satisfied that they will conduct it without inconvenience to the public or injury to private rights." (*S. C. B. I.*)

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

Power to call upon co-owners to show cause why they should not appoint a common manager.

(a) inconvenience to the public, or

(b) injury to private rights,

the District Judge may, on the application in case (a) of the Collector, and in case (b) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager :

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

Old Act :—This section has been borrowed from Regulation V of 1812. Section 26 of that Regulation provided :—

"In any case in which it is shown to the satisfaction of a District Judge that inconvenience to the public or injury to private rights has ensued, or is likely to ensue from disputes subsisting among the proprietors of a joint undi-

vided estate, it shall be competent to such Judge, upon the application of the Revenue authorities or of any individual having an interest in such estate, to appoint a person duly qualified and under proper security to manage the estate, that is, to collect its rents, and discharge the public revenue and provide for the cultivation and future improvement of the estate." And section 29 laid down :— "It shall also be competent to such Judge to remove such manager, if the Revenue authorities or any individual having an interest in the estate be at any subsequent time dissatisfied with his conduct and representing the circumstances of his case, move such Judge for his removal."

An application under this section is not a suit between a landlord and tenant within the meaning of s. 143, and no appeal lies from an order rejecting such an application—(*Hossain Bux v. Mutookdhari Lal*, I. L. R., 14 Cal., 312); The learned Chief Justice observed in this case :

"It appears, on an examination of the Code, that the order in question is not a suit within the meaning of s. 143 of the Bengal Tenancy Act of 1885, as the operation of that section is confined to suits between landlord and tenant. This is not a proceeding between landlord and tenant but a proceeding initiated by some third person who does not fill either of these positions. Under those circumstances and it not being shewn to us that unless it comes within the meaning of s. 143 this order would be appealable at all, we must hold that the order is not appealable, and therefore we must dismiss the appeal for that reason."

Where a property consisted of 243 estates or tenures, sixty of which were entered under separate numbers in the land register of the Collector, other portions of the property being taluks, dependent tenures, and ryoti holdings, and a single application is made by twelve of the co-sharers in such property (many of whom held shares in several of the tenures and estates) calling upon the remaining four sharers in the property to show cause why a common manager should not be appointed under s. 93 of the Bengal Tenancy Act, the Court should before granting the application, call upon the applicants to state whether all of them are entitled in common to the various estates and tenures and, if not so entitled, should call upon them to divide themselves into as many groups as there are properties held by them in common; and in the latter case each group of shareholders should put in separate applications on which separate Court fees should be levied. The notice in the case of tenures should be as provided, s. 93 of the Act and should be of the same character and to the same effect as in the case of estates.—(*Fuzel Ali Chowdry v. Abdul Mozid Chowdry*, I. L. R., 14 Cal., 659). The facts of this case were as follows: This was an application made jointly by twelve of the co-sharers of a certain property under s. 93, of the Bengal Tenancy Act, calling upon the four remaining sharers in the property to show cause why a common manager should not be appointed to certain property consisting of 243 estates or taluks, of which about 60 bore separate numbers on the Collector's Land Register, whilst other portions of the property were taluks and dependant tenures, howlahs and raiyati holdings, and did not therefore appear in the Collector's Register at all. The petitioners were holders of different proportions of the entire property; for example, petitioner No. 1 had a 1 anna 15½ gandas share in ten of such estates; petitioner No. 12 had a 2 annas 13½ gandas share in estates No. 214, and also a 2 annas 9 gandas share in estates No. 215; petitioner No. 1 had a 17 gandas 3 karas share in estates No. 58 of such properties and a 2 annas 13 karas share in two others; and the four persons called upon to show cause likewise held various shares in many of the estates. The grounds on which the application was made were that there existed disputes which were likely to lead to

normal injuries to private rights in the collection of rents and the letting out of these lands.

The opposite party made no objection to the appointment of a manager.

The District Judge being of opinion that it was inexpedient to deal with all these properties by one single order, seeing that the interest of the different parties were so various and complicated, considered that a separate application should be made with regard to each separate estate and further considering that great difficulty would arise in determining the question on whom and in what manner notice ought to be served with regard to the inferior tenures and holdings which did not appear in the Collector's Register, referred the following questions to the High Court before dealing finally with the application, *viz.*,

(1.) Whether the application then before him should be considered as one miscellaneous case and be dealt with as one application or whether there should be as many applications as there were estates or tenures.

(2.) Whether the usual court-fee should be levied on each application (if more than one application should be thought necessary) or whether a separate court-fee should be levied in respect of every estate or tenure.

(3.) When a petition under section 93 of the Act relates to properties or tenures that do not appear in the Collector's Register, what is the proper notice to be given to the co-sharers?

The opinion of the Court (Petheram, C. J. and Ghose, J.) was as follows:

"We think that the questions submitted by the Judge should be answered as follows:

(1.) There need not be as many applications as there are estates or tenures mentioned in the application. But in the circumstances as disclosed in the reference it would be necessary for the Judge to call upon the applicants to state whether all of them are entitled in common to the various estates and tenures mentioned in the application; and if not to divide themselves into as many groups as there may be properties held by them in common. In this latter case it would be necessary that each group of shareholders should put in separate applications.

(2.) If such separate applications have to be put in and not otherwise separate court-fees should be levied upon each application.

(3.) The notice in the case of tenures will be as provided by s. 93 of the Bengal Tenancy Act; it will be of the same character and to the same effect as in the case of estates,

94. If the co-owners fail to show cause as aforesaid within

one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to order them to appoint a manager, if cause is not shown.

95. If the co-owners do not, within such period, not being

less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the

Power to appoint manager if order is not obeyed.

District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

- (a) direct that the estate or tenure be managed by the Court of Wards in any case on which the Court of Wards consents to undertake the management thereof; or
- (b) in any case appoint a manager.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (b) of the last foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

Power to nominate person to act in all cases under clause (b) of last section.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

Provisions applicable to manager.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103.

(8) He shall be removable by the order of the District Judge, and not otherwise.

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

100. The High Court may, from time to time, make rules defining the powers and duties of managers under the foregoing sections.

The High Court have laid down the following rules under this section :—

"1. Every manager appointed under Chapter IX of the Bengal Tenancy Act shall, in all matters, act in accordance with such orders as may from time to time, be issued by the District Judge.

"2. The manager shall pay the Government revenue, rent, and other demands of the like nature, as also all just liabilities upon the estate, in due and proper time.

"3. No manager shall have power to sell or mortgage any property, nor shall he grant or renew a lease for any period exceeding three years, without the express sanction of the District Judge: Provided that this rule shall not render valid any lease for a shorter time than three years, if such lease is disapproved by the District Judge, or if the District Judge directs that his sanction is to be obtained as regards all leases granted by the manager.

"4. The manager shall apply for the sanction of the District Judge to any act which may involve extraordinary expense."

CHAPTER X.

Record of Rights and Settlement of Rents.

The Government of India in their Despatch to Her Majesty's Secretary of State for India, No. 6 of the 21st March 1882, para. 100, observed upon the question of recording rights:

"Where local officers possess a full and accurate knowledge of local facts, and where they are, therefore able to pursue a vigorous method of administration, these advantages are very commonly due to their being supplied with information relating to the detail of every field, and to the existence of numerous and disciplined bodies of subordinate native officials who are able to collect the various particulars within their cognisance as materials to suggest fairly safe generalisations. Whether we have regard to the prevention of famine, or to the waste of life or waste of money which may directly result from official ignorance or uncertainty so as to approach the dimensions of famine;

"whether we look to the need for active administration, which shall search out and expose deep-seated evils or to the lack of some solid assurance that facts affecting agricultural interests shall be so notorious and indisputable that none shall be able to pervert them to the injury of the weak, we perceive, in the circumstances of many portions of Bengal and particularly of Behar, strong reasons for placing the Bengal officials on a level, in point of administrative advantages with their brother officers in other provinces. We seek no fiscal advantage but the prevention or diminution of human suffering."

Referring to this, the Secretary of State remarked in his Despatch:—

"While fully admitting the advantages which would attend the establishment of village records and accounts, the formation of a record-of-rights, and the introduction of a field survey, I cannot avoid the apprehension that the difficulties of carrying out these measures in those parts of Bengal in which village accounts and accountants, if they ever existed, have long ago entirely disappeared, even from tradition and remembrance, may prove greater than you anticipate. Your present proposal, however, merely contemplates an experimental commencement of the work in the Patna Division of the province of Behar, where the need for it is, you think, most pressing, and the conditions least unfavourable; and to this I will make no objection."

The provisions of this Chapter were thus summarized in Council:—

"What we have done then, has been to give the Revenue-officer, in the first instance, power to settle all disputes that may come before him. Where no dispute arises, he will record what he finds, he will not alter rents, and his entries will only have a presumptive value in cases afterwards brought before the Courts; where a dispute arises, he will decide it, on the same grounds, by the same rules, and with the same procedure, as a Civil Court. His decision will be liable to appeal like that of the ordinary Civil Court to a Special Judge, who may or may not be the Judge of the district, and will be subject to a further special appeal to the High Court. In appeal the High Court may settle a new rent, but in so doing, is to be guided by the other rents shown in the rent-roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low; but if a second appeal is preferred, as it may be, on the ground that the special Judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, or has given the raiyat a wrong status, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be. The decision of the Revenue-officer in disputed cases, subject to these appeals, will have the effect of a judgment of the Civil Court, and will be *res judicata*, thus barring a fresh suit for enhancement for 15 years. In section 103 we have given a special power to landlords to have this procedure applied, on depositing the expenses, to individual estates, and we apprehend that in the cases of auction-purchasers who are met by a combination of their tenants and are unable to get at the papers of their predecessor, this power will be found very useful. In sections 105 and 106 we had made ample provisions for the publication of the record and for hearing objections, so as to eliminate the danger of any one being prejudiced by entries made behind his back. All this applies to ordinary settlements which may be undertaken either by direction of the Government of India, or by order of the Local Government on the application of the parties, or in the case of serious disputes, or in Court of Wards or Government estates or where an estate is under settlement. In fact, this procedure is the only procedure which will now be at the disposal of Government for the purposes of a revenue settlement. But this procedure allows of no alteration of rent except on the application of the individual land-

lord or individual tenant, and allows of no reduction of rents, except on the two or three grounds, such as diminished area and diminished prices, which can be pleaded as grounds of reduction in a Civil Court. We have, however, provided for a special settlement to meet special circumstances. Under the special settlement (section 112), the Settlement-officer will have power to settle all rents, and will, moreover, have power to reduce rents on other grounds than those ordinarily applicable, and all such rents as he settles will hold good for the same term of years as if fixed under a judicial decree. But this procedure, which gives unusual powers of interference, and which is meant to be applied only in circumstances in which the operation of the ordinary law is likely to prove insufficient, requires some strict safeguard. We have therefore provided that it shall only be applied after the previous sanction of the Governor-General in Council has been obtained. It is an extreme power intended to take the place of Sir R. Temple's Agrarian Outrage Act, and I trust it will be resorted to as little as that Act was; but it seems desirable that in the exceptional cases in which it may be necessary to have recourse to this procedure, the Government should have the power of going to the root of the disputes and should be able to put the whole relations of landlord and tenant on a stable footing for a reasonable period."

General instructions of the Board of Revenue.

The following settlement rules have been proposed by the Board of Revenue in connection with the Bengal Tenancy Act :

Settlements.

SECTION I.—PRELIMINARY.

The rules contained in this chapter apply to ordinary settlements and resettlements of estates or parts of estates, and not to first settlements of waste land, which are subject to special rules.

2. The following lands become liable to assessment and settlement:—resumed rent-free lands; estates purchased on account of, or escheated, or forfeited to, Government; islands thrown up in the middle of navigable rivers under certain conditions; and alluvial accretions.

3. All lands coming under settlement may be divided into two classes: *first*, those in which the proprietary right vests in Government, and *second*, those which are the property of private persons. The process of settlement, however, is not materially affected by the class to which the estate belongs in respect of proprietary right. That question has an important bearing on the calculation of the Government share in the assets and on the selection of the person to be held responsible for its payment; but the operations of measurement, inquiry into amounts of current rents or rates of rent, and record of the rights and interests of tenants of all classes are not affected by the class of the estate whether Government or private.

4. Settlements are of three kinds: *first*, settlements merely of land revenue in which no rents are recorded; *secondly*, settlements under the Regulations not repealed by the Tenancy Act, in which rents are recorded but are not settled; and *thirdly*, settlements under Chapter X of the Tenancy Act, in which rents are both recorded and settled. Settlements of the first kind are rare, and are for the most part confined to newly-formed alluvial lands. An island is thrown up in a navigable river, and is taken possession of on behalf of Government. The lands are entirely uncultivated; but a speculator is willing to take a farm of the estate for a term of years at a specified jumma. This is an instance of

the first class of settlements, and no settlement of this kind should be concluded without the sanction of the Board. Settlements of the second class will be concluded in cases in which there appears to be no ground for an enhancement of rents, or which are not of sufficient importance to justify the application of the provisions of Chapter X of the Tenancy Act. All important settlements will fall under the third class.

5. The present settlement laws not repealed are contained in Regulation VII of 1822, Regulation IX of 1825, Regulation IX of 1833 and in the Bengal Tenancy Act, VIII of 1885.

6. The repeal of Bengal Act VIII of 1879 by the Tenancy Act leaves Government the same powers (in addition to those given by Chapter X) for the settlement of land revenue as distinguished from the settlement of raiyats' rents, as it held before that Act was passed, so that the revenue authorities may now proceed if they think fit under the Regulations for the purpose of determining the amount of the Government revenue which they may think proper to demand without having recourse to Chapter X of the Tenancy Act, but raiyats' rents cannot be enhanced under those Regulations. If it is desired to settle raiyats' rents, and not merely to ascertain existing rents, or the enhanced rents which might be fairly made the basis of calculation of assets without intending to have such enhanced rents enforced by Government, then the only procedure open is that contained in Chapter X, and when recourse is had to that procedure, fair rents must be settled for all tenants where a settlement of land revenue is being made in respect of the local area. The settlement law of Orissa, or of other tracts to which the Tenancy Act has not been extended, is not of course affected by the passing of that Act.

Section 2, Regulation IX of 1825, extends the provisions of clause 6, section 2 of Regulation VII of 1822, and of the subsequent sections of that Regulation (which originally applied only to the Ceded and Conquered Provinces, including Cuttack), *first*, to all lands, including lakhiraj lands, not included within the limits of an estate for which a permanent settlement has been concluded, as far as the same may be applicable; *second*, to all estates held khua, during the period of their being so held; *third*, to the Soondurbans, the hill tracts of Bhagulpore, and other extensive forests and wastes not included within the limits of pergunnahs, mouzabs, or other revenue divisions specified at the time of settlement as belonging to the mohals then assessed, as well as to all estates bordering on such forests or wastes.

Section 60, Act XI of 1859, extends the same provisions to estates purchased by Government under that law, and they are to be followed, as far as applicable, in the case of escheated and forfeited estates.

7. Settlements under Chapter X of the Tenancy Act can be made only in cases in which Government has passed an order under section 101 of that Act. The Tenancy Act makes no change in the settlement law as regards the selection of settlement-holders or the portion of the assets to be taken as revenue, when the amount of these assets has been ascertained. But it makes an important change as regards the method by which the amount of the assets themselves is to be ascertained and recorded. If existing rents have to be altered in order to arrive at the amount of the assets which is to be made the basis of settlement or if settlement is to be made with the raiyats direct at an enhanced rental, then rent-rolls must be framed in accordance with the provisions of the Tenancy Act, the procedure laid down in the rules under that Act must be followed, and the procedure of Regulation VII of 1822 will not apply as regards the processes to be gone through for the ascertaining of the amount of assets. In such cases all questions regarding disputed

possession, liability to assessment, amount of present rents, ascertainment of rents fairly demandable, status of tenure-holders of every degree and of raiyats and under-~~rai~~yats will have to be determined according to the rules under the Tenancy Act.

When disputes have been settled, and the record of rents and rights has been finally published and the assets have thus been ascertained under the Tenancy Act Rules, the selection of the settlement-holders and the determination of the amount of the revenue to be demanded from them will be made according to the rules in force in this respect before the passing of the Tenancy Act.

It will thus be seen that when it is intended to alter existing rents, otherwise than by the consent of the raiyats, the procedure laid down in the Tenancy Act, and in the rules made under it, must be followed in all the settlement operations preliminary to the selection of settlement-holders, that is to say in all proceedings for settlement of boundary disputes, measurements, record of rents and record of rights.

8. The rules which have been published by the Government of Bengal under sub-section 5, section 190 of the Bengal Tenancy Act are accordingly reproduced (see notes under section 101). Particular attention is drawn to the rules relating to the "service of notice" and to the "record of rights and settlement of rents," which are all applicable to settlements made under Chapter X of the Act. These rules are, as was remarked by the Committee by whom the draft was prepared, "of great importance, as they will not only apply to the survey and record of rights about to be taken in hand in Mozufferpore, but will also in the majority of cases, form a Code of instructions for the guidance of officers engaged in making settlements of land revenue in any of the districts to which the Act extends."

They will apply to all settlements in which Government has passed an order under section 101 of the Tenancy Act, and the instructions contained in the Board's rules are merely supplementary to them.

9. But in settlements in which it is not intended to alter existing rents, or it is intended to alter them only with the consent of the raiyats, or where a settlement is being made of land which for the first time is being assessed to rent, such as dearahs or alluvial formations, it will not be necessary to have recourse to the procedure laid down in the Tenancy Act, and the rules made under it. In such cases the procedure laid down in Regulation VII of 1822 will apply. In some of the processes comprised in a settlement, the same set of rules and instructions apply whether the operations are conducted under the Tenancy Act or under Regulation VII of 1822, in others the procedures are essentially different, and as regards these latter processes separate sets of rules are proscribed and will have to be followed according as the operations are carried out under the Tenancy Act or under the old settlement Regulations.

10. In settlement cases under the Tenancy Act the rents of the raiyats can only be raised on the grounds prescribed in the Act and after the production of proof of the existence of these grounds.

In settlement cases under the old Regulations the rents of the raiyats may be raised with their own consent or after suits brought against them in the civil court. But even with his own consent the rent of an occupancy raiyat cannot, under the provisions of section 29 of the Tenancy Act, be raised otherwise than by a registered agreement, or to an extent exceeding two annas in the rupee. The Collector must decide in each case whether to adopt the simpler but less efficacious procedure of the Regulations, or to apply for an order under section 101 of the Act for the survey of the estate and the preparation of a record of rights.

11. Under section 3, clause 17 of the Tenancy Act, officers cannot be vested with the general powers of a revenue officer, but with certain functions only as specified in certain provisions of the Act. When an order has been passed under section 101, directing that a survey be made and record of rights prepared, the Government will then in each particular case appoint a revenue officer to discharge the functions referred to in the Chapter. The revenue officer so appointed may then be appointed a settlement officer under clause 1, Chapter VI of the Government Rules, and be vested with the powers therein specified, but no one can be appointed a settlement officer under that clause unless he is already a revenue officer under the Act. For settlements not made under Chapter X there will be no necessity to appoint a settlement officer, as, under section 195 of the Act, the powers and duties of settlement officers as defined by any law not expressly repealed remain in force.

12. An application in the form of Appendix I should be forwarded by Collectors every year on or before the 20th August in respect of all estates liable to settlement during the ensuing year to which it is desired to extend the procedure of Chapter X of the Act. Care should be taken in case of each settlement under Chapter X of the Tenancy Act to complete arrangements for the new settlement before the old settlement expires, as under section 110, rent at an enhanced rate can be realised only from the beginning of the agricultural year next after the final publication of the record.

13. Under the orders of Government, contained in paragraph 20 of Resolution dated 22nd April 1873, where the settlement operations in any one district do not extend over an area of more than 2,000 acres in the course of one and the same official year, they must be carried out by the regular subordinate establishments constituted under that Resolution. When the settlement operations extend over a larger area than this, and it becomes necessary to entertain additional agency for the work, local officers should submit to the Commissioners for transmission to the Board not later than the 20th August of each year, the regular estimates of land settlement charges drawn up in the form supplied annually by the Accountant-General through the Board to each officer. These estimates will be checked and passed on by the Board to the Accountant-General, to enable him to include the amounts required in the budget estimate for the Lower Provinces which he renders to Government.

14. It must, however, be understood that the mere fact of these estimates being passed by the Board conveys no authority to disburse the amounts entered in them. The sanction for disbursement will be given on detailed statements for each district, which local officers should submit to the Board through the Commissioners, not later than the 10th January of each year, in the forms Nos. 2 and 2A as given in the appendix. The details to be entered in the columns provided in this form for settlement establishments and contingencies should be filled in according to the classification contained in the Accountant-General's form mentioned in clause 13, any difference between the two being explained. As soon as the grant for the settlements of the year is placed at their disposal the Board distribute it between the different districts. As the orders of Government are generally not received till some time after the beginning of the year, it is practically unavoidable to incur some expenditure under this head in anticipation of sanction.

15. The following several processes are ordinarily comprised in a settlement:—

- I.—Identification of the land and securing attendance of persons connected with the land.
- II.—Measurement.

III.—Testing of the measurement.

IV.—Determination and record of rents.

V.—Record of rights.

VI.—Disposal of claims to hold land rent-free or at fixed jamas.

VII.—Provision for police, patwaris, &c.

VIII.—Determination of proprietary or other allowances.

IX.—Terms of settlement and selection of settlement-holders.

One and the same set of rules and instructions apply to processes II, III, VII, VIII, IX whether the settlement proceedings are being conducted under the Tenancy Act or under Regulation VII of 1822.

The rules to be followed for conduct of processes under heads J, IV, V and VI, differ according as the proceedings are under Regulation VII of 1822 or under the Tenancy Act.

SECTION II.—IDENTIFICATION OF THE LAND AND SECURING THE ATTENDANCE OF PERSONS CONNECTED WITH THE LAND.

When the settlement proceedings are being carried on under the Tenancy Act, the rules made under that Act for the demarcation of boundaries and enforcing attendance of persons connected with the land will apply. It is to be remembered that under Rule 32, Chapter VI of the Tenancy Act rules, when a dispute arises before the final publication of the record regarding the correctness of any entry or the propriety of any omission as to the possession or ownership of the land, or regarding the correctness of any other entry (not being an entry of rent settled) which the settlement officer has made or proposes to make, the settlement officer must take evidence and decide the dispute as a civil suit and his decision will have the force of a decree, while when the proceedings are being taken under Regulation VII of 1822, the settlement officer may dispose of disputes respecting boundaries of villages, taluks, and other tenures under the provisions of clause 4, section 14 of that Regulation according to possession, leaving any party aggrieved by his decision to file a regular suit in the Civil Courts. It is only when the proceedings are being carried on under Regulation VII of 1822, that the instructions hereinafter given in this section (which have been generally re-produced from the Board's old rules regarding identification of the land and enforcing attendance of parties) will apply.

1. When the land was originally declared liable to assessment by *resumption*, if the resumed land was properly identified prior to resumption, or if it has come under settlement on some previous occasion, the settlement officer should experience little difficulty in tracing it. Should it consist in part of parcels of land which are entered in the register as less than 50 bighas in any one village, he is not to assess such patches, although they may have been resumed.

2. In cases of escheat or forfeiture, and of purchase on account of Government, the duty of identifying the land must necessarily fall on the settlement officer.

3. When the estate is of considerable extent, the settlement officer should proceed in person to make the necessary preliminary enquiries respecting the position and extent of the land; otherwise a canoongoe or amin, or any other competent ministerial officer, may be deputed with the necessary power under section 24, Regulation VII of 1822, the extent of his powers being duly recorded in his letter of appointment.

4. On reaching the village or estate, the settlement officer, or the officer deputed by him, should summon the zemindari officers or such other persons connected with the land as may be able to point out the boundaries. Should the parties summoned contumaciously withhold information, they render themselves liable to imprisonment under the above-quoted section till they comply.

5. Putwaris, gomashas, and other persons by whom the accounts have been kept may be summoned with their accounts. If they refuse to attend, or neglect to produce the papers, or to swear to their correctness when produced, or if they decline generally to give evidence respecting them, they also become liable to punishment under sections 23 and 25, Regulation XII of 1817; section 12, Regulation II of 1819; and clause 2, section 19, Regulation VII of 1822.

6. Collectors have also powers under Act XX of 1848 to impose fines for failure to comply with requisitions which they have authority to make.

7. The settlement officer may also summon the proprietor or farmer of the estate under settlement; or may require him to cause the attendance of the village officers. Omission or refusal to comply with such requisition subjects the proprietor or farmer to a daily fine, under clause 3, section 13, Regulation II of 1819, and clause 2, section 19, Regulation VII of 1822.

8. The powers mentioned in the above rules are independent of those under the Bengal Survey Act, V of 1875. Where the land to be settled is of considerable extent but the settlement operations are not conducted under the Tenancy Act, it will still be desirable to move the Government to order that a survey of the tract be made under section 3 of the same Act, and to appoint the settlement officer, if other than the Collector, to be Superintendent of Survey, and his subordinates to be Assistant Superintendents, or Deputy Collectors for the purposes of the Act, under the provisions of section 4. This done, and the formalities of the Act complied with, the settlement officer, and any person deputed by him, will be able to exercise any of the further powers described in that Act.

9. In tracing the boundaries of a temporarily-settled estate which has become open to a re-settlement of the land revenue, the settlement officer may find a boundary dispute existing between the holder of such estate and the holder of an adjoining estate, each claiming the ownership of the disputed tract of land.

10. In such a case the settlement officer will first satisfy himself whether the disputed tract is or is not liable to assessment.

11. If the tract forms part of an area which is covered by the existing assessment on an estate of which the settlement is not actually open to revision, or if it forms part of a revenue-free property, the tract cannot be liable to assessment. In that case the settlement officer will merely record his finding to that effect as the reason for taking no further notice of the disputed tract in his proceedings.

12. But if the tract does not form part of any such area, it will be liable to assessment to land revenue, and the question will be what party shall be called on or admitted to enter into the settlement engagement. In order to determine this, the settlement officer will proceed under the powers vested in him by section 19 and other sections of Regulation VII of 1822, and by the other laws on the subject, to ascertain which of the claimants is *de facto* in possession as owner.

13. Should he find that such possession is held by A, the owner of the estate under re-settlement, the settlement officer will treat the disputed lands as a portion of A's estate for the purposes of re-settlement.

14. If, on the other hand, the settlement officer should find that *de facto* possession as owner is held by B, the other claimant, he will leave the disputed lands out of account in making the assessment on A's estate.

15. But the fact of A having allowed himself to be dispossessed of such lands by B is no sufficient reason for the settlement officer to allow the lands to remain unassessed to the land revenue which is payable to the State. He will therefore proceed under the first proviso in clause 9, section 10 of Regulation VII of 1822, to obtain the sanction of the Commissioner of Revenue (who now

exercises the powers of the Board in this matter under Regulation I of 1829) to his making a separate settlement of the lands in question with the party occupying them as owner, and to his constituting such lands as a separate *towjih* estate, separately answerable for the land revenue demand to be assessed upon it, and separately borne on the general register of revenue-paying lands.

16. On receipt of the Commissioner's sanction, the settlement officer will call on *B*, the *de facto* owner, to enter into an engagement for the land revenue which may have been assessed on the lands; and if he should fail to do so, the Collector may proceed as provided in section 3, Regulation VII of 1822, for the case of recusant proprietors; the person whom the settlement officer called on to engage for the land revenue will be looked upon as the proprietor entitled to the *malikana* allowance under clause 2, section 5 of the Regulation.

17. Whether the party called upon to engage refuses to accept the settlement engagement, or accepts it under protest, it will be open to him, if not satisfied with the proceedings of the revenue authorities imposing an assessment on the land, to institute a civil suit for the annulment of the proceedings.

18. Should the Collector, after acting in accordance with the above instructions, be made a party to any civil suit between the rival claimants to the ownership of the lands, it will only be necessary for him to plead that he has acted strictly in accordance with the settlement law, and has done no act tending in any way either to maintain or to disturb the possession of either party, *vide* the case of the Collector of Moorsshedabad *v.* Roy Dhanput Singh Bahadur, reported at page 49, volume XV, Bengal Law Reports, remarks in page 55.

19. The instructions in the above clauses 10 to 18 will not apply to boundary disputes arising in the course of settlement of estates the property of Government. If in tracing the boundary of any such estate lands within the boundary assumed by the settlement officer should be claimed by a neighbouring zemindar who is *de facto* in possession of the same, no demand of land revenue can properly be enforced until the claim to ownership has been decided or admitted in favour of Government. All that the settlement officer can do in such a case is to lay down the undisputed boundary, and also the boundary up to which he claims that the ownership of Government extends, collecting and securing at the same time all the evidence available in support of the claim of the Government in order to its assertion in Court if necessary.

20. As the provisions contained in clause 6, section 2, and in the thirty-three following sections* of Regulation VII of 1822 may be made use of, as far as they are applicable, in the settlement of *purchased* and other *khas* estates,† the settlement officer should dispose of all disputes respecting boundaries of villages, taluks, and other tenures within such estates under clause 4, section 14 of that law, or refer them to arbitration under sections 7 to 10, Regulation IX of 1833.

21. Where the land to be settled is of no great extent, the Deputy Collector, amin, and other officer will ordinarily measure and map the land as soon as he identifies it; but where the identification is preliminary to a more regular survey, either by the professional Survey Department or by a party under the settlement officers, the officer employed in the demarcation of boundaries should prepare such a sketch of the village or other boundaries identified by him as will serve for a guide to the officer making the measurement. All natural landmarks on, or in the vicinity of, the boundary line should be shown on the map, with their correct bearings and distances; and where such marks are wanting,

* Note.—Section 27 of Regulation VII of 1822 has been repealed by Act XII of 1876.

† Government order, 1st August 1839.

artificial marks should be erected to facilitate the tracing of the boundary. Detailed instructions will be found on the chapter on surveys in the Board's Rules.

SECTION III.—MEASUREMENT.

The instructions in this and the next section apply whether the settlement operations are under Regulation VII of 1822 or under the Tenancy Act.

1. The field-by-field measurements of lands for settlement may be done either by a professional party under the control of the Survey Department, or by the settlement party.

2. In the former case the rules of the Survey Department for regulating cadastral surveys will apply. The duty of the settlement officer as regards measurements will be limited to demarcating the lands to be surveyed in such manner as may be determined in each case before the survey party takes the field, to testing the plans of the survey party when sent to him for that purpose, and also to testing them for the purpose of satisfying himself that the khasrahs and other measurement papers are being properly prepared, to indicating to the Survey Department any changes which have taken place since the survey amins made their measurements, and to pointing out any errors which may have come to his notice by his testing.

3. Where the measurements are made by the Survey Department, the settlement work of the settlement party begins when the tracings are furnished to the settlement officer by the Survey Department with the khasrahs forms in which the Survey Department will have filled in the columns of area, and such other columns as that department may be authorised to fill in, but the settlement officer should also satisfy himself from time to time that the khasrahs are being properly prepared by the Survey Department. For this purpose he should occasionally examine the amin's work in the field, and bring to the notice of the survey officer in charge of the camp any mistakes or errors which he may discover, without, however, giving any orders to the survey subordinates.

4. Where the settlement is not preceded by a cadastral survey made by the professional department, the lands should be surveyed and mapped, and the measurements made by the settlement officer with as much approach to scientific principles and accuracy as circumstances will admit. Where the settlement embraces a considerable tract of country and extends over several seasons, it will be possible to organize parties of amins, and peshkars or inspectors with Deputy Collectors at the head of them, who have knowledge of the principles of land surveying; and in such cases the work should be done on scientific principles with as close an approach to the system of the professional department as possible.

For the guidance of settlement officers undertaking operations of this class, a set of rules is published at the end of this section which was drawn up for the survey and settlement of the Khordah Government estate in Pooree. They were framed at a conference at which several officers who had experience of such operations took part, and with the assistance of the Deputy Surveyor-General. The rules would probably require modification for each settlement so as to adapt them to local circumstances; but a similar set of instructions should be framed and issued with the approval of the Board as the first step in each considerable settlement. Reference may be made to Colonel Barron's hand-book for a description of the professional departmental system.

5. Such elaboration, however, will not be possible in the settlement of small areas. In each case the settlement officer must make the best of the agency at his disposal. The instructions which were published in the former

edition of the Board's rules are therefore reproduced in the following 16 rules, as they may be of assistance to those engaged in making rougher measurements for settlement purposes.

6. Measurements should ordinarily be made with chains, unless the prejudices of the people should make them unwilling to dispense with the poles or bamboos to which they have been accustomed.

7. The chain should in Bengal be 30 feet long; if a pole be used, it should either be of the same length, or some divisor of 30, as, for instance, 6 feet.

8. Instead of any local systems of measurement, the standard Bengal bigha of 14,400 square feet (1,600 square yards), or the English statute acre of 43,560 square feet (4,840 square yards), should be adopted in Bengal, and in Behar the standard bigha of the pergunnah or the statute acre. If the acre is not adopted as the standard in measurements made under Act VIII of 1885, a formal order must be passed by the Revenue officer under section 92 of the Act.

9. In measuring with a chain or pole consisting of a certain number of English feet, the results may be adapted to the standard bigha, according to the following calculations:—

When a chain of 30 feet is used.

$\frac{1}{4}$ th of a chain by $\frac{1}{4}$ th of a chain or 9 square feet = 1 cowrie.

4 cowries, or $\frac{1}{4}$ th of a chain by $\frac{1}{4}$ th, or 36 square feet = 1 gunda.

20 gundas, or 4 chains by $\frac{1}{4}$ th, or 1 chain by $\frac{1}{4}$ ths, or 720 square feet = 1 cottah.

20 cottahs, or 4 chains square, or 1 chain by 16, or 14,400 square feet = 1 bigha.

When the pole is of 6 feet.

1 pole by $\frac{1}{4}$ th, or 9 square feet = 1 cowrie.

4 cowries, or 1 pole square, or 36 square feet = 1 gunda.

20 gundas, or 20 poles by 1, or 5 poles by 4, or 720 square feet = 1 cottah.

20 cottahs, or 20 poles by 20, or 5 poles by 80, or 14,400 square feet = 1 bigha.

10. The English statute acre contains 4,840 square yards, and is subdivided into roods and perches, 40 perches making one rood, and 4 roods one acre. The perch of 16½ feet in length and breadth contains 272½ square feet, or 30½ square yards, which multiplied by 40 gives 1,210 square yards to a rood, and this again multiplied by 4 gives 4,840 square yards to the acre.

11. When the English statute acre is adopted, the system observed by professional officers should be followed. Thus, length and breadth of figures will be taken in Gunter's chains. A Gunter's chain measures 22 yards or 66 feet, and is divided into 100 links, each link being 7·92 inches in length. One chain, or 66 feet, is equal to 4 perches; so that one square chain is equal to 16 square perches, or the tenth part of an acre, and consequently 10 square chains are equal to an acre. Every superficial chain contains 10,000 square links, and every superficial acre 100,000 square links. If, therefore, the contents of a field is made up in square links, divide the number by 100,000 or, (which is the same thing) cut off the last five figures, and the remaining left-hand figure or figures will give the contents in acres, the remainder being decimal parts of an acre, which multiplied by 4 and 40 will give the number of roods and perches, respectively.

The table of square measure is as follows:—

144 square inches = 1 square foot.

9 square feet	= 1 square yard.
30 $\frac{1}{4}$ „ yard	= 1 „ perch.
40 „ perches	= 1 rood.
4 roods	= 1 acre.
640 acres	= 1 mile.

12. When a pole or rod of 16 $\frac{1}{2}$ feet is used, the calculations will be—

Rod. Rod. Sq. ft. Sq. ft.

$$1 \times 1, \text{ or } 16\frac{1}{2} \times 16\frac{1}{2} = 272\frac{1}{4} \text{ square feet, or 1 sq. perch.}$$

$$1 \times 40, \text{ or } 16\frac{1}{2} \times 660 = 10,890 \text{ square feet, or 1 rood.}$$

$$4 \times 40, \text{ or } 68 \times 660 = 43,560 \text{ square feet, or 1 acre.}$$

13. A long pole should be used, and it should not be thrown by the hand of a single man—a practice which must fail to ensure correctness—but should be carried over the ground by two men, one holding each end, while a third person pitches a pin or arrow into the ground perpendicularly to the end of the rod.

14. The tables given in the appendix No. 3 will serve to facilitate the conversion of acres into standard bighas, and *vice versé*.

15. Where a large establishment is employed, the Collector or settlement officer should instruct a few of the more intelligent amins, who should in their turn become the instructors of others; and no person should be employed as an amin till he has shown that he thoroughly understands mensuration. The measurement must be made field by field. Contiguous fields, however, if consisting of land of the same description and held by the same raiyat, may be measured together as one plot. The rules in the chapter on Surveys should be adhered to as closely as possible.

16. Whatever the nature of the measurements to be made, every settlement officer should provide himself with a sufficient stock of measuring instruments, such as chains, compasses, &c. Paper scales may be manufactured at a very trifling cost, and will prove as serviceable pasted on a board as those made of iron or brass. Should the compasses get out of order, such is the simplicity of their construction that they may ordinarily be repaired by a common blacksmith; otherwise they should be sent for repair to the Superintendent of the Mathematical Instrument Department at the Presidency. When the needle becomes disordered the magnetic power may be restored by a few passes with a loadstone, with which the settlement officer should always be provided.

17. Applications for instruments must be submitted in the form and in accordance with the rules of the Calcutta Government Mathematical Instrument Department, which form an appendix (No. IV) to the chapter on Surveys.

18. It is of importance that the instruments required should be correctly described, according to the list contained in the rules alluded to in the foregoing clause, in order to preclude doubt or misapprehension. Such articles as drawing paper, quills, colours, and the like are supplied from the Stationery Office, and should not be included in these indents.

19. The headings of specimens of an amin's schedule, *chitta* or *khasrah*

The forms given in the old rules do not apply now. The forms referred to here answer all the same purposes.

with instructions for filling them up are given under rule 8, Chapter VI of the rules made by Government under the Tenancy Act and in the Board's instruction under that rule.

It should be borne in mind that these schedules are not intended to serve the purpose of the first settlement only. If carefully prepared, they cannot fail to be of much use for future settlements as well, and if kept corrected from time to time they will obviate the necessity for remeasurements at future settlements.

20. The prescribed forms of khasrah or chitta may be modified so as to suit local circumstances, but the modified form must be approved by the Board before it is adopted.

21. The headings of specimen forms of abstracts of particulars of (khatis) holdings with instructions for filling them up are given under rule 8, Chapter VI of the rules made by the local Government under the Tenancy Act. A separate khatian must be prepared for each tenure-holder and under-tenure-holder of every degree as well as for every raiyat and under-raiyat. By substituting the local names of tenure-holders or under-tenure-holders whatever they may be for "raiya" the form will suit for tenure-holders and under-tenure-holders of any degree. Besides the khasrah and khatis the amin will also furnish a terij or ekwal jamabandee and final report in the forms given in the appendix Nos. 14 and 15.

22. Amins should be paid by the month rather than by contract, unless the former method would greatly enhance the cost of measurement. No invariable rule is enjoined in this respect. The practice of paying by the piece, being so generally prevalent and so much approved, need not be wholly abandoned; but the settlement officer should exercise his judgment as to the arrangement best suited to the work in hand.

23. No fixed rates can be laid down for contract work where that mode of remuneration may be adopted. The settlement officer will determine the rate according to the circumstances of the case. Lands widely scattered in patches cannot be measured at the same rate as compact alluvion; but whenever the cost of survey, including fairing the records and tracing the maps, exceeds 4 annas per acre, or the entire cost of the settlement and survey operations exceeds 8 annas per acre, an explanation must be submitted.

24. The amins must not be kept many months in arrear. If their pay is issued with regularity, there never will be occasion to make advances; but in job work two-thirds of the rate of pay authorized for salaried amins may be advanced monthly to each person employed, subject to adjustment on completion of the measurement.

25. When many amins are employed, unless they act immediately under a Deputy Collector, there should always be a peshkar or other superior officer over them, receiving not less than Rs. 25 per mensem.

Rules for cadastral survey and measurement of the Khordah Estate by the Settlement Party.

[SEE CLAUSE 4 ABOVE.]

I.—When the skeleton maps of village boundaries on the scale of 32 inch = one mile have been received from the professional surveyors, the settlement officer is to consider and decide the area to be assigned to each Deputy Collector's party.

II.—The whole area to be measured should be divided, as far as may be into three equal compact parts of about 75,000 acres (117 square miles) each. One part to be assigned to each separate Deputy Collector.

III.—The Deputy Collector's main camp should be in some central place within the area under survey by his amins. The amins should be concentrated as much as possible.

IV.—The Survey Department sheets on which the fields will be surveyed and mapped contain an area of 292·5 acres. They will form convenient sized blocks for each settlement amin to work on. The area contained in these sheets will also be sub-divided into smaller sections by theodolite lines and stations running through the village,* fixed by the professional Survey Department. The amin must complete one sheet before he commences work on a second.

V.—The area assigned to each Deputy Collector should be divided into five sub-circuits. Each sub-circuit to be under the charge of a peshkar. The peshkars should visit every amin once a week at least, and test his work. Not less than 10 per cent. of the work should be thus tested.

* The surveyors shall have theodolite stations and lines on or near the common margins of sheets when one village is plotted on two or more sheets.

VI.—Before commencing the actual measurements and khasrah work of fields, the amin should run lines from and to the fixed points given by the professional surveyors, constructing a net-work of triangles, with sides of about ten chains in length. When measuring the sides of these triangles, all field boundaries crossing the lines shall be carefully noted on a rough sketch made on country paper, and also plotted on the plan of the village. The whole plan or sheet will thus be subdivided into numerous small triangles, and accumulation of error from building up field upon field be obviated.

VII.—Ten amins should be employed under each peshkar. The amins must fill in the khasrah and khatian on the spot. The khatian should be written out daily as the measurement proceeds, and should on no account be allowed to stand over till the measurement of the village is completed. The khatians should be signed by the raiyats before the amin leaves the village; but in order to guard against the possibility of the amin's compelling the raiyats to sign the chittas or khatians against their will, the Deputy Collector should have the khatian signed in his own presence.

VIII.—The amins may plot the fields on the plans and compute the areas field by field as the measurement proceeds. The maps need not be inked in on the spot. This will be done in the Settlement Office.

IX.—All entries in the khasrahs and other records should be written in black ink. If mistakes be made the pen should be drawn through the original entry and the correction should be written with red ink, and should be initialed by the officer who makes the correction.

X.—The page of the khasrahs are to be totalled daily.

XI.—After each plan or sheet has been measured, and the details have been tested and corrected on the spot, the plan should be sent to the Settlement Office, where it will be inked in and where the areas will be tested and traces made on vellum.

XII.—As soon as this is done a trace should be sent to the Deputy Collector.

XIII.—Fields and such subdivisions of fields as require to be separately settled are to be measured by amins or field-measurers in the khasrah method, that is to say, by measuring the sides and the diagonals of the field if quadrilateral, or, if the field be irregular in shape, by dividing it into convenient portions, either quadrilateral or triangular, and measuring their sides by intersections or by offsets.

XIV.—Each homestead in the village sites should be separately shown on the map and should have a separate number. If the scale adopted for field measurements should not permit of this being done, the village should be measured in one block. In this latter case a separate map of the village homesteads should be made on a scale sufficiently large to permit of each separate homestead being clearly and separately shown on the map.

XV.—Fields shall be numbered consecutively right through the village, commencing from the north-west corner where practicable.

XVI.—When subsequent to the survey, the plotting, and the numbering of fields, two or more fields are found to have been clubbed, and a division for any purpose is necessary, the original numbering shall be retained and the additional number of the field should be added below it. Thus, if 6 be the original number of a field which it is found necessary to subdivide, and 629 be the last number of the khasrah and the plan of the village, the subdivisions should be numbered 6 $\frac{1}{2}$, 6 $\frac{2}{3}$, &c., &c.

XVII.—Each separate field requiring to be separately settled should have a separate number in the map and khasrah.

XVIII.—The field areas shall be calculated by the amin on the spot, either with the acre comb, or by actual calculation from the length and breadth, distances and diagonals, as the settlement officer may direct.

XIX.—The difference between the summation of fields and traverse area of each village should not exceed two per cent. It is to be remembered, however, that the agreement of the summation of fields and traverse area on this system is not meant to be a test of the accuracy of the field measurements. They must be tested by the actual measurements (purtals) on the ground. The agreement between the summation of fields and traverse area only indicates that the detailed areas have been correctly computed, but it does not in any way show that the measurements were correctly made.

XX.—When offset measurements are resorted to, they should not exceed two chains in length.

XXI.—The position of trees, and other objects forming landmarks, should be carefully measured and mapped.

XXII.—Large patches of waste may be divided into blocks for convenience of consecutive numbering.

Check, or purtal.

XXIII.—The peshkar, on the occasion of each visit to an amin, must check the work done

by the amin up to the date of his visit. The potal may be on either of the following systems :—

First system.

XXIV(a).—The measurements and plans of the amins may be checked by running lines across the work done by the amins from one fixed point to another, and noting if the field boundaries intersected by the potal line agree with those shown on the amin's plan. Where errors are found, they must be corrected on the spot and reported to the Deputy Collectors.

(b).—On this system, the peshkars must check not less than five per cent. of the area computations of the amins.

Second system.

XXV(a).—The test or potal is to be the measurement of direct lines between fixed points, and the complete survey and khasrah record of each field through which these lines may pass.

(b).—The potal measurements are to be plotted in the field, the measurements of the sides of the fields being entered on the plan itself, and the khasrah recorded in the form prescribed.

(c).—Immediately after the measurement of a potal line the amin's plan is to be compared with it, and all the potal plans by peshkars are to be forwarded weekly to the office of the Deputy Collector for record, with a report of the result of the comparisons and the measures taken to correct errors.

(d).—On this system not less than 10 per cent. of the fields surveyed by the amin are to be tested by the peshkars.

(e).—The potal plans, after completion, are to be traced on tracing cloth (vellum), and a comparison made with the sectional plan of the village. The result of the comparison will then be noted on the potal plan by the Deputy Collector, and an order at the same time entered at the passing of the plan or otherwise. These potal plans and tracings are to form part of the village records, and a certain percentage of them should be examined by the settlement officer on the occasion of his visits to the camps of Deputy Collectors.

XXVI.—All khasrah entries of the fields crossed by the potal lines must also be checked by the peshkars, who must put their initials in the column of remarks for each field they have so checked.

XXVII.—In the weekly and monthly returns the peshkars must distinctly show (in the manner prescribed by the settlement officer) how much and what description of work they have tested and passed as correct.

XXVIII.—After each section or sheet of a village is filed in the Deputy Collector's office, it must be finally potalled by himself or, under his direction, by a trustworthy officer, on either of the systems which are prescribed above for the peshkar's potal.

XXIX.—If a Deputy Collector is unable himself to potal the work in any section, and finds it necessary to depute a selected peshkar to do so, in such cases special precautions must be taken that they do not have access to the plans lodged in the office, and the lines to be measured by the peshkars should invariably be selected by the Deputy Collectors. The lines selected may be made known to the peshkars by means of tracings or sketches on rough paper, of the theodolite stations of the sections, on which tracing the line to be potalled should be sketched.

XXX.—Every potal line should be shown in the plans, peshkar's potal lines being shown by blue dotted lines, and the Deputy Collector's potal lines by firm blue lines.

XXXI.—The percentage of fields potalled by the different agencies should be shown in the monthly and annual reports.

XXXII.—The settlement officer should draw up a set of detailed instructions as guide to the amins for filling in the khasrah and other forms.

XXXIII.—The detailed instructions drawn up by the settlement officer with the forms should be submitted to the Board of Revenue for approval. When approved by the Board, these detailed instructions should be copied by every amin with his own hand, or they should be printed and a copy should be given to each amin.

Instruments.

XXXIV.—Every peshkar and every amin should be furnished with a plane-table with tripod, a pair of drawing compasses, a Gunter's chain, and scales for measurements and for areas. Deputy Collectors and peshkars should also be supplied with optical squares for potal measurements, and each peshkar should have two plane-table site rules for the use of the amins of his party when village sites are being measured.

Pay of Amins.

XXXV.—Amins are to be divided into four grades—

			Rs.	
1st grade	23	} per month.
2nd "	...	...	18
3rd "	...	...	15
4th "	...	...	12

XXXVI.—The settlement officer is to arrange his establishments according to the exigencies or emergencies of the work and the seasons of the year, keeping strictly within the budget allotments and to appoint, dismiss, promote, or degrade peahkars, amins, mohurirs, or chainmen, as may be necessary. Provided that every change from the sanctioned scale of appointments in classes, such as amins, mohurirs, &c., shall be reported to the Commissioner for sanction before being carried out, excepting such increase of numbers in the lower grades of any class of appointments as may be compensated for by the reduction of numbers in the higher grades of the same class so as not to increase the aggregate salaries of such class.

XXXVII.—An amin is expected to complete 300 acres per month, and should certainly complete not less than 250 acres.

XXXVIII.—The conventional signs used by the Revenue Survey Department to show topographical details should, as far as possible, be adopted.

XXXIX.—It is not necessary that hills should be drawn on the maps. It will be sufficient to write the word "hill" in the space occupied by hills in the maps.

SECTION IV.—TESTING OF THE MEASUREMENT.

Measurements conducted by an amin, canoongoe, or other inferior officers must be tested by the settlement officer, who, by measuring a few fields in different parts of the estate, will be able to form a tolerably correct opinion of the general character of the work. The result of the scrutiny should be recorded in the khasrah form showing each entry as given by the amin and as found by the testing officer. In the event of complaints of incorrect measurement being preferred, the settlement officer should, of course, subject to particular investigation the fields which form the subject of complaint. In very petty estates the measurements may be tested by a canoongoe, or such other competent ministerial officer as the Collector may depute, provided always that the testing is done by some other than the measurer. When a whole village has been measured the total area of the village as ascertained by measurement should be also tested by comparison with the area given on the revenue survey maps.

NOTE.—When more than one estate, or portions of more than one estate under settlement, are in the same village, the measurement of all can be tested at the same time; the test in that case should be rather so many plots per cent. (say 5 per cent.) than a few fields in each estate, for each estate may often not contain more than a few fields.

2. Re-measurement need not, as a general rule, take place when the amount of error is below 10 per cent.; but in this respect much must be left to the discretion of the settlement officer. Error, even when exceeding 10 per cent., may sometimes, especially if caused by miscalculation of areas, or oversight, be remedied without resort to actual re-measurement; but should there be reason for suspecting wilful error, re-measurement should be undertaken, however small the amount of apparent error may be.

SECTION V.—DETERMINATION AND RECORD OF RENTS.

When the proceedings are being carried on under Chapter X of the Tenancy Act, the rules made by the Local Government for the determination and record of rents supplemented by the Board's instructions given under these rules will apply.

When the proceedings are being conducted under Regulation VII of 1822, the following instructions should be borne in mind:—

1. Occupancy raiyats' rents cannot be enhanced by settlement officers under the powers vested in them by the Regulations, except with the consent of the raiyats themselves, or by civil suit, and even with the consent of the raiyats the rent of occupancy raiyats cannot be enhanced by more than two annas in the rupee, except in the cases mentioned in provisoes i, ii, iii, section 29 of the Tenancy Act. But this restriction of enhancement does not affect the assessment of additional lands occupied by the tenant since the present rent was fixed. Such assessment is not an enhancement of the rent of the holding, but an assessment of land which did not form part of the holding.

2. In order, however, to ascertain the amount of the assets which should be made the basis on which Government revenue is to be calculated, the settlement officer, though he cannot enhance existing rents, may record the amount of the rent which might be fairly demandable, and to which the existing rents might be enhanced if civil suits were instituted. The amount so recorded may be made the basis on which the revenue to be paid by the settlement-holder may be calculated. Enhanced rents thus recorded will not be binding on the raiyats. They will merely form the data from which the amount of the Government revenue is to be calculated. If the settlement-holder accepts settlement at the amount so calculated, and after he has accepted it wishes to enforce any such enhanced rents so recorded, he must sue for the enhancement in the Civil Court, unless the raiyats voluntarily agree to pay it; and if the estate is held khas, the Government must under similar circumstances sue for enhancement in the Civil Courts.

3. It will thus be seen that a jamabundee or rent-roll under Regulation VII of 1822 should only be made—

1st.—Where the lands are being assessed to rent for the first time, as in the case of dearahs, alluvial accretions and like instances in which the lands are unoccupied, or in which for any other reason the Government may fix and enforce the payment of any rent it may choose to demand.

2nd.—In cases where it is not intended to alter existing rents, or it is intended to alter them only with the consent of the raiyats.

3rd.—In cases where though an enhanced rent may be fairly demandable from the raiyats, yet the object being merely to ascertain the sum demandable as Government revenue from the settlement-holder, it is desired to ascertain the rental which he might be reasonably expected to realise from the raiyats, but it is left for him to obtain the enhanced rents fairly demandable by civil suit or otherwise.

In all other cases the assets should be ascertained by preparing a rent-roll and record of rights under the Tenancy Act. That Act leaves very little to the discretion of the settlement officer in the matter of fixing the amount of the assets. He must take the existing rents as he finds them, and can enhance or reduce them on the grounds and to the extent specified in the Act and, except where a settlement of land revenue is being made, only on the application of the parties, and after production before him of such evidence as would satisfy a civil court.

4. In recording rents demandable for the purpose mentioned in the preceding instruction, regard should be had to the rules and instructions for settlement of fair rents under the Tenancy Act given in section XVII *post*.

5. In every case it will be necessary for the settlement officer to draw up a careful proceeding, which should, if possible, be in English, giving clearly and precisely the grounds upon which he has recorded the rent demandable. Even if the existing rates are not altered, their fairness should be discussed, and the

reasons for retaining them should be stated. And where any change is made, or an enhanced rent is recorded as one which might be fairly demandable, it should be fully explained with reference to the section of the Act by which it may be justified.

6. Besides the rents of the raiyats and under-raiyats, it will be the duty of the settlement officer to record the rents demandable from tenure-holders, with reference to Chapter III, Act VIII of 1885. Attention should be paid to the distinction drawn in section 5 of the Act between tenure-holders and raiyats.

7. In temporarily-settled estates the property of individuals, difficulties have frequently arisen from tenures having been created by the proprietors, and in some instances by farmers, to extend beyond the period for which the settlement of land revenue has been made with them. These cases will now be governed by sections 191 and 192, 104 (2), and 101 (d) of the Tenancy Act.

8. In estates which have become the property of Government by escheat, and in which the Government has only succeeded to the rights of the late proprietor, all tenures which would have been binding on the late proprietor will be binding on the Government.

9. In estates purchased by Government at a sale for arrears of revenue, the Government will exercise the same rights of voiding tenures as any private purchaser.

10. Upon estates which are private property, tenures binding against the settlement-holder, but not against Government, will be recorded; but the rents of such tenures will be fixed in accordance with the sections of the Tenancy Act referred to above.

11. When a settlement officer finds tenures on a Government estate which are invalid for want of authority in the person who created them, he need not necessarily set them aside. The creation of the tenure may have been *bonâ fide* for the good of the estate (as where jungle tracts have to be cleared and brought into cultivation), and the tenure-holder may have done good service. In such cases the tenures may be recognized and confirmed, but the sanction of the Commissioner will be required.

12. The rent of tenures which are valid as against Government can be enhanced only on the grounds and to the extent specified in sections 6 and 7, Act VIII of 1885.

13. The Lieutenant-Governor has empowered* the revenue officers mentioned below, respectively, to sanction, or subsequently to approve, general rates of rent for adoption, as the basis on which assets are to be calculated in settlements of the different classes specified, when the record of rents and rights is being made under Regulation VII of 1882; and settlement officers must submit their reports for sanction accordingly:—

I.—Regular settlements in which the number of raiyats whose rents are to be recorded under the Act does not exceed 200.	} The Collector or other officer specially empowered by the Government to exercise the powers of a Collector in this behalf.
II.—Regular settlements in which the number of such raiyats exceeds 200, but does not exceed 400.	

III.—All other classes

} The Commissioner of the Division.

... The Board of Revenue.

14. With reference to the provisions of section 37 of the Tenancy Act, the rent fixed at a settlement should not be enhanced within a period of fifteen years in cases where a suit for enhancement would fail under that section.

* Vide Calcutta Gazette of 11th June 1879, Part I, page 544.

SECTION VI.—RECORDS OF RIGHTS.

The rules for preparation of the record of rights when the proceedings are being carried on under the Tenancy Act will be found in section XVII at the end of this chapter. When the proceedings are under the Regulation VII of 1822, the same rules, as regards the manner in which the status of each tenant is to be determined and recorded will generally apply.

The rights of tenure-holders and of cultivators are to be carefully recorded as required by clause 1, section 9, Regulation VII of 1822; but it must be borne in mind that the law only sanctions the record of actually existent and acknowledged or established privileges, and not the creation of new ones.

2. The declaration made in the old rent-law, that every raiyat is entitled to receive a pottah from his landlord, has not been reproduced in the Tenancy Act of 1885; but if a raiyat in a Government estate wishes to take a pottah, his request should always be complied with. In practice, however, it will probably be found that the raiyats do not desire to take pottahs; they are satisfied with the guarantee which the jumabundi record in the Government zemindari office affords; and in such cases the settlement officer should be careful not to force pottahs on them. Nor is it of importance to Government to get the raiyats to execute kabulyats, except where the rents are enhanced by agreement and not under Chapter X of the Tenancy Act, as the rents recorded under the Tenancy Act are secured by law and the admission of the raiyat through a kabulyat is not necessary to establish their validity.

3. Protection should be afforded to raiyats by giving effect to the provisions of clause 1, section 9, Regulation VII of 1822, which enjoins that a specification of the holding or tenure of every raiyat and of the rent assessed on it shall be recorded in the settlement proceedings, and a copy of such recorded specification of his holding and rent given to every raiyat willing to take it, in other words, a copy of the khatian relating to his holding should be given to him as required by rule 35, Chapter VI of the rules under the Tenancy Act.

SECTION VII.—DISPOSAL OF CLAIMS TO HOLD LAND RENT-FREE OR AT FIXED JAMAS.

When the record of rights is being made under the Tenancy Act, should any question arise regarding the validity of claims to hold land rent-free, the settlement officer must adjudicate on the question as in a civil suit in accordance with the Tenancy Act Rules. When the proceedings are taken under the Regulation, the following instructions will apply:—

1. With regard to resumptions, lands which have been occupied for 60 years without payment of revenue cannot be assessed, but are protected by limitation. The onus of proof is on the person claiming to hold revenue-free, but when it is practically certain that no revenue has been paid since the Permanent Settlement, no resumption proceedings should be instituted. In the case of alluvial accretions a different procedure based on a periodical survey is prescribed. Hence resumption proceedings for the purpose of declaring lands which are held free of revenue to be liable to pay revenue, will in future be very rare indeed, it has not therefore been thought necessary to produce the rules.

2. Proceedings to resume and assess holdings which are found to be held without payment of rent, or as mokurari, or invalid tenures in estates under temporary settlement, or resumed, or purchased for Government at sales for arrears of revenue, should be taken under Regulations IX of 1825 and II of 1819.

3. The settlement officer should issue the notice prescribed by clause 2, section 5, Regulation IX of 1825, in all cases where there is reason to believe

that such tenures exist. After the expiration of the term specified in the section, the settlement officer should take up the claims in the manner enjoined by law, and, unless himself empowered to decide them, prepare the cases carefully for the Collector.

4. If the rent-free or mokurari title appears to be unimpeachable, the facts should be reported to the Commissioner, who will review them and record a proceeding, which will form part of the settlement record. If the Commissioner's proceedings confirm the settlement officer's or Collector's conclusion, no further proceedings will be taken—the tenure will be admitted to be rent-free or mokurari.

5. If, in the opinion of the settlement officer or Collector the tenure is invalid, he shall report the case for the orders of the Commissioner, and on receipt of orders confirming his decision he shall proceed to assess it under section 22, Regulation II of 1819, as modified by section 10, Regulation III of 1828. (Under Regulation I of 1829, Commissioners exercise the powers conferred on the Board by the above-quoted Regulations.)

6. No tenure should be brought under assessment in the course of settlement proceedings where the facts show that a civil suit for resumption would be barred by limitation.

7. No tenure, therefore, which has been held rent-free or at a fixed rent since the Permanent Settlement can now be assessed, and no resumed tenures therefore are entitled to the favourable terms of settlement prescribed by clause 2, section 8, Regulation XIX of 1793. If in any case, however, the Collector thinks that favourable rates of settlement should be granted to the holder of a resumed tenure, he should report specially for the order of the Commissioner.

8. In escheated, forfeited and other estates, where Government steps merely into the rights of a former proprietor, the provisions of clause 6, section 2, and the 33* following sections of Regulation VII of 1822, are made applicable by clause 2, section 2, Regulation IX of 1825; but the provisions of that Regulation and of Regulation II of 1819 cannot be employed in such estates for the resumption of rent-free and other tenures under 100 bighas. The Collector must in such cases proceed by civil suit, and the onus is on him to show that at some time since the Permanent Settlement the tenure formed part of the *mâl* assets of the estate, and that the suit is not barred by the law of limitation.

9. The resumption for Government of tenures over 100 bighas found included in such estates must also be effected by regular suit.

10. Under section 29, Act IX of 1871, at the expiration of the period limited by that Act to any person for instituting a suit for the possession of land, his *right* to such land becomes extinguished. In any estate, therefore, where Government succeeds only to the rights of a former proprietor, it has no right to sue for resumption in cases where its predecessor in estate was barred.

* SECTION VIII.—PROVISION FOR POLICE, ROADS, PUTWARIS, &c.

1. In the settlement of some estates it may still be necessary to provide for the performance of the duties, incumbent on zemindars generally, of giving notice of the occurrence of offences against the law and aiding the Police in the apprehension of offenders. The settlement officer must in such cases make an adequate provision for the maintenance of such subordinate officers as may be required for this purpose. Ordinarily, however, the provisions of recent legislation, such as Bengal Act VI of 1870, make this unnecessary.

2. Where a special provision for village police is necessary, the Magistrate

* Note.—Section 27 of Regulation VII of 1823 has been repealed by Act XI of 1876.

will, on application, inform the settlement officer whether the provision should be in land or money, and what number of police are required for each village. On receipt of this information the settlement officer should assign about three acres of average land to each chowkidar and an acre to each bullahir if the subsistence is required to be in land; and three rupees a month to each chowkidar and one rupee to each bullahir if in money. In the former case the settlement officer should furnish the Magistrate with a statement of the numbers assigned to the fields in the map and khusrak.

3. With reference to the provisions of Bengal Act VIII of 1862, no provision need be made in Government estates any more than in estates, the property of private individuals, for the performance of the district postal service. Under the Act, if the estate is farmed, the rate is payable by the farmer: and when an estate is held under the direct management of the Collector, no rate is leviable.

4. It is unnecessary to make any provision for roads in the settlement, these being now constructed from District Road Funds, or contributions from the ten per cent. assignment.

5. Provision should invariably be made for the maintenance and correction of the maps and records, so that they may be written up to date from time to time, in accordance with such rules as the Board may prescribe in this behalf. In estates held khas arrangements should be made to have this done through the agency of patwarees, where they exist, and where they do not exist, through the collecting agency by whatever denomination it may be called. In estates which are not held khas, the settlement-holder is bound by the terms of settle-

I have serious doubts about this rule. ment to keep the records corrected from year to year, according to the rules which may be prescribed by the

II. J. R. Board in this behalf, failing which he will be liable to have his lease cancelled, and the settlement officer should see that adequate arrangements are made for the fulfilment of this obligation.

SECTION IX.—DETERMINATION OF ASSETS, ALLOWANCES, AND THE LAND REVENUE DEMAND.

1. The land revenue demand will be assessed on the assets of the estate which will consist of the aggregate of the rents recorded by the settlement officer as existing or as fairly demandable when the assets have been recorded under Regulation VII of 1822, or the aggregate of the rents demandable as shown in the record published under rule 34, Chapter VI of the Tenancy Act rules when the rents have been settled under the Tenancy Act, from (1) all the raiyats whose holdings are not included in tenures which are binding on the Government; (2) from all dependent talukdars, and tenure-holders of the first degree whose tenures are binding on the Government.

Any deductions which may be necessary under Rule 6 below must be made from the assets before the revenue is assessed upon them.

2. Parcels under 50 bighas in one village released from assessment under Government order dated the 26th January 1841 must, under the ruling of Government of the 5th June 1843, continue excluded from the settlement of the rest of the tenure, so as not to be regarded as forming a part of it.

3. In an estate the property of Government the entire assets as described above will be at the disposal of Government, either to take as the land revenue demand, or to divide with any person with whom a contract arrangement may be made for the collection of the rents, in which case the land revenue demand entered in the revenue roll or towjib will be the assets *minus* the allowance which is made to such person to cover the risks and costs of collection, and for his own profit.

4. In estates, other than those which are the property of Government, the land revenue demand will be assessed by deducting from the assets the allowances to which the proprietor, or the person having a right to settlement, is entitled under the orders of Government for the time being in force.

5. The allowances to be granted to settlement-holders and farmers of estates hereafter settled or let in farm (not being cases covered by Rule 2 below in section XI) have been fixed by the Government as follows :—

- (1) In Government estates settled with tenure-holders or with one or more principal raiyats as representatives of the rest, or with a farmer, when, under special circumstances, settlement with a farmer is rendered necessary, 20 per cent. of the gross assets should be allowed for collection expenses and farming profits.
- (2) In resumed estates settled with the proprietors, a consolidated allowance of 30 per cent. should be given for collection expenses and proprietary allowance.
- (3) In estates let in farm in consequence of the refusal of the proprietors to accept settlement, a consolidated allowance of 20 per cent. should be given for collection expenses and farming profits. Besides this consolidated allowance to the farmers, 10 per cent. should be allowed as malikana to the proprietor.

6. It is to be observed that the consolidated allowances under the above rules are to be calculated upon the assets of the estate after deductions have been made for any authorised allowances such as those for embankment repairs, &c. Under section 5, Regulation VII of 1822, the 10 per cent. allowance for malikana, in the case of proprietors refusing settlement, must be calculated on the net amount realised by Government, i. e., on the assets after deducting the consolidated allowances for farming profits and cost of collections; unless the proprietor has stated the highest amount of jumma for which he is willing to engage, in which case it is to be calculated on such amount.

7. If in any particular case, looking to the allowance hitherto made in the particular estate under settlement, or for any other good reason, the allowances for collection expenses as fixed above appear to be unduly high, the Board, on the recommendation of the Commissioner, may, at their discretion, reduce the allowances. It is, however, desirable that in all cases the allowances should be liberal, and such as to content the farmer or proprietor concerned, and to render it unlikely that he will attempt to levy irregular exactions.

SECTION X.—SELECTION OF SETTLEMENT-HOLDERS.

1. It is the duty of the settlement officer to determine with whom the settlement shall be made, and to adjust the terms, subject to revision by the superior revenue authorities.

2. The mode of dealing with Government estates is explained in Chapter III. (Government estates), volume I of the Board's Rules.

3. The former proprietors of estates purchased by Government are not to be admitted to settlement, unless it should clearly appear that the sale of the estate was not caused by any oppression or mismanagement on their part.

4. In farming Government estates, the settlement officer should exercise his discretion as regards the requisition of security, with due reference to the means and character of the farmer. When the farmer is a person of known integrity and substance, the security may be dispensed with. The practice which prevails in some places of demanding a deposit of a year's rent as security is approved, especially in the case of small farmers. Sums due from farmers and their securities are recoverable under the provisions of Bengal Act VII of 1880.

5. The settlement of temporarily-settled estates, the property of private individuals, should of course be offered to the proprietors, and careful attention should be paid to the provisions of section 10, Regulation VII of 1822. If any of those who are entitled to settlement neglect to attend, the settlement may be made with the rest; but if any of them attend, and object to the jumma proposed to be assessed, the settlement may still be made with the rest, but only as a farming settlement, and for a term not exceeding twelve years.

6. The settlement of resumed lakhiraj estates should, as a general rule, be made with the proprietors. In the Behar districts, where the interests of two parties require to be adjusted, namely, the proprietors and the lakhirajdars, the settlement should be conducted under the rules relating to badshahi tenures approved by Government and circulated with Board's circular order No. 62, dated 14th June 1837.

7. Resumed towfir should be settled at full rates with the party who may prove his title thereto.

8. The settlement of resumed alluvion should be made with the proprietor of the estate to which it is an increment. Such settlement is to be in all cases temporary. Whenever settlement is not made with the owner of the proprietary right, he is entitled to malikana.

9. When all the subordinate arrangements for settlement have been completed, the settlement officer should procure the attendance of the person entitled to settlement, and call upon him to sign the kabuliyat, or state in writing his objections. These objections, if any, must receive consideration and be removed if practicable; but should they be such as are not entitled to attention, the reasons for rejecting them and otherwise disposing of the estate should be recorded.

10. When it is found necessary, in consequence of the recusance of the party entitled to settlement, to engage with other parties for the payment of the Government revenue, the preference should be given (1st) to a farming settlement with one or more of the head raiyats on the estate; (2nd) to direct management by the Collector; (3rd) to a farming lease to an outsider.

11. It occasionally happens that the duty devolves upon a Collector of making a settlement of an undivided share of an estate or tenure, which is the property of Government. It will often be convenient and unobjectionable to give such a share on farm to the co-sharers in the estate, so as to avoid the inconvenience to the tenants of having to deal with more than one landlord.

SECTION XI.—PERIOD OF SETTLEMENT.

1. No estate should be permanently settled unless the holders have a clear statutory right to such a settlement.

2. Under the orders embodied in the Board's circular order No. 6 of January 1866 (reproduced below), all proprietors of resumed revenue-free estates in permanently-settled districts are entitled to permanent settlement.

CIRCULAR No. 6.

I.—It has been decided by the Governor-General in Council* that "clauses 2 and 3 of section 8 of Regulation XIX of 1793, lay down rules for calculating the revenue to be fixed on resumed zemindari lakhiraj tenures, and provide that if the proprietor agree to the amount so fixed, he and his heirs and successors shall hold the land at such fixed revenue for ever. There is no power to make any reservation on account of any particular sort of profit, or any one or more of the resources of the land, and no power to reserve a right of future increase on any account whatever. The jumma must be assessed once and for ever, as the whole demand of the State as its share of the profits and resources of

* Order to Government of Bengal, No. 444, dated 13th January 1866.

the land, of whatsoever description. The only way in which any enhancement above the first year's revenue is allowable is by the fixing of a progressively increasing jama, which is allowable only when part of the land is uncultivated, and must be definitely fixed, at the time of settlement, under certain reasonable restrictions."

II.—In accordance with this construction of the law on the subject, the Governor-General in Council has deliberately declared that "the proprietor of a resumed lakhiraj estate in a permanently settled district is entitled to a Permanent Settlement thereof, based on the assets as existing at the time of resumption."

III.—His Excellency in Council has further resolved that these principles shall be applied immediately to the case of all resumed revenue-free estates which, under any different interpretation of the law, are now settled for a term of years only, instead of being settled permanently.

IV.—The orders of the Governor-General in Council are "that all existing settlements of resumed revenue-free estates shall be upheld as Permanent Settlements, except when it shall appear that a settlement was *avowedly* made at lower rates than those at which it would have been made if the revenue authorities had intended a Permanent Settlement, and when, in any such case, the settlement papers themselves may give the means of estimating the full assets of the estate, including capabilities."

V—

VI.—In all such cases it will be only necessary to ascertain that the settlement was not made "*avowedly*" at lower rates than those at which it would have been made if the revenue authorities had intended a Permanent Settlement." Except in that contingency, all existing temporary settlements of resumed revenue-free lands are to be at once declared permanent, revised engagements being exchanged with the proprietors.

VII.—Even in the excepted cases, the current settlement is only to be revised so far as "the settlement papers themselves may give the means of estimating the full assets and capabilities of the estate" at the time the settlement was made.

3. No invariable rule can be laid down respecting settlements upon a gradually increasing revenue. The nature of the settlement is to be determined in each case according to circumstances. When the law entitles a party to a settlement in perpetuity, such settlement *must* be made, whatever may be the condition of the estate in respect of cultivation. The question is not as between a settlement upon an increasing revenue and a temporary lease, but as between a perpetual settlement at an increasing, and the same at a fixed revenue.

4. In all cases of settlements other than those which the Collector himself is competent to sanction under Rules I and II, Section XVI, whether the estate under settlement be the property of Government or belong to a private proprietor, the new regular settlement proposed by the Collector should, from the date of expiry of the current settlement, be concluded in anticipation of sanction, but with a distinct proviso that any alteration in its terms which may be subsequently prescribed by competent authority shall take retrospective effect from the date on which the estate shall have been brought under the terms of the new settlement.

5. This is not, however, to be held to interfere with the Collector's power to hold any Government estate under khas management on the expiry of the engagement on which it has been held, when he shall be of opinion that such a course is preferable to the provisional conclusion of the regular settlement proposed by him; nor to preclude him from adopting a similar course in regard to any estate, the property of a private person, on refusal of the proprietor to accept the provisional engagement mentioned in the foregoing rule.

6. A settlement should ordinarily take effect from the beginning of the financial year next after that in which the proceedings of the settlement officer have been completed.

7. When an estate, the property of Government, is to be held under direct management, it will usually be unnecessary to conclude a settlement for any definite period. The settlement report will merely state that the mahal is to be held under direct management till further orders.

SECTION XII.—ALLUVIAL FORMATION. .

Islands the property of Government.

1. Whenever the Collector may receive information by report from the Survey Department, or from any other quarter, that an island has formed in any large navigable river within his jurisdiction, he shall proceed to enquire whether the alluvial formation, or any part of it, occupies a site identifiable as having once belonged to an estate on which no remission of revenue has been allowed in respect of such site or to a valid *akhiraj* tenure. If the whole formation occupies such a site, the Collector shall take no further proceedings.

2. If, on the other hand, the formation, or any part of it, does not occupy a site so identifiable, the Collector shall next proceed to consider whether such formation, or such part of it, comes properly under the description contained in clause 3, section 4, Regulation XI of 1825. If he find that it does, he should at once proceed to take possession under the authority conveyed by section 3, Bengal Act IV of 1868, which modifies Act IX of 1847 as regards islands.

3. This should be done in the usual native method, *viz.*, by erecting a long bamboo on the land in the presence of some of the *chowkidars* or chief inhabitants of the neighbouring villages. A proceeding should be recorded on the spot by the officer taking possession, and should be attested by witnesses. This proceeding should contain as exact a statement of the position and area of the land as can be made with compass bearings of conspicuous objects on the mainland.

4. Possession assumed under Rule 2 should be merely temporary until it has been ascertained whether or not the channel round the island is fordable throughout the year. If the channel be found to be not so fordable, the land should be considered the property of Government, and should be assessed and settled.

5. In every succeeding year, up to the time when the island may come under settlement, enquiry should be made at the end of the rainy season into its condition, and the rights of Government re-asserted wherever necessary.

6. A register of such cases should be kept in the form given in Appendix No. 6.

7. In these cases the proprietary right being vested in Government, no party can have any *right* to engage. Should any person, however, acting in good faith, have broken up the soil, his prior occupancy may be taken into consideration.

Increments to estates, the property of the owners of the estates.

8. Land gained by gradual accretion, whether from the recess of a river or of the sea, is, under section IV, Regulation XI of 1825, to be considered an increment to the tenure of the person to whose land or estate it is thus annexed; but, as mentioned in that section, such land is liable to assessment to the public revenue to which it may be liable under the provisions of Regulation II of 1819 or of any other law in force, *i. e.*, it is liable to assessment "in the same manner as other unsettled *melhals*," and the revenue assessed belongs to Government (*vide* clauses 1 and 2, section 3, Regulation II of 1819).

9. Act IX of 1847 laid down—

"that no measures shall hereafter be taken for the assessment of such lands
* except under the provisions of this Act." * * *

Section III of the Act is as follows:—

"It shall be lawful for the Government of Bengal, in all districts, or parts of districts of which a revenue survey may have been or may hereafter be completed and approved by

Government, to direct from time to time, whenever ten years from the approval of any such survey shall have expired, a new survey of lands on the banks of rivers and on the shores of the sea, in order to ascertain the changes that may have taken place since the date of the last previous survey, and to cause new maps to be made according to such new survey."

Section 5 provides for deductions from the sudder jama to be made on account of land which such new maps show to have been washed away; and section 6 for assessments on land which such new maps show to have been added to estates.

10. In connection with the surveys of the lands on the banks of the Ganges and Megna in the Furreedpore, Dacca, and other districts in 1877 and the following years, much discussion has taken place as to the proper construction of this Act, and the action to be taken under it. It has been decided that land which can be proved to have re-formed on a site which was formerly occupied by land included in the Permanent Settlement is not liable to assessment as having been "added" to the estate in the sense of section 6 of the Act, even though the maps of the last preceding survey may show that the site was covered with such preceding survey.

11. On the other hand, the maps taken place in other parts of the estate) will not exempt the settlement-holder from the liability to assessment on any particular plot of land which a comparison of the maps shows to have been "added to the estate" since the last survey,

* Government order No 2917, dated 29th November 1878, paragraph 8.

on the very site of land which existed and was included in the Permanent Settlement of the estate. The Government order* puts the case thus:—

"It appears to the Lieutenant-Governor that, as Government is now bound to leave alone all lands that the zemindars can show to have been within the limits of their original estates, so long as they have kept their proprietary title alive by paying the Government revenue thereon, Government may very fairly insist on assessing all lands added to the original estate by accretion from the river bed or the sea. The natural presumption is that newly formed land is a gain from the public domain, and, as such, is liable to assessment. But it is open to any zemindar to show that it is really a re-formation, and if this is proved, or if the Revenue officers themselves have reason to believe the land to be a re-formation of revenue-paying land, they are bound to leave it alone. It is a corollary of this principle that zemindars cannot be forced to take abatements on account of diluvion: Government has no power practically to confiscate their prospective rights to re-formation."

12. The rules that have been laid down for the conduct of this dearah survey, with the approval of Government, are annexed to this section, as they will serve as a guide in similar operations; but whenever such surveys are to be undertaken, the first step should be to obtain instructions from the Board in the shape of a set of rules for the guidance of the officers concerned. If the rules now published are wholly applicable, they can be adopted with the Board's sanction; otherwise such modifications may be proposed to the Board as the circumstances of each survey require.

13. Rules 12, 14, 18 and 19 of the annexed set embody important principles, which will apply to all such surveys and re-settlements.

14. In effecting the settlement of alluvial land with the proprietor of a temporarily-settled estate (*see* Act XXXI of 1858), the settlement officer should, with his consent and with the consent of the Board of Revenue, incorporate the assessment of the increment with that of the parent estate, taking one revised engagement for the amalgamated revenue of the whole as an integral estate. If the parent estate be permanently settled, or if, in the case of a temporarily settled estate, either the proprietor or the Board decline to assent to the course

above prescribed, the increment must be assessed as a distinct estate, and be thenceforward held separately liable for the revenue assessed upon it.

15. If the alluvion is formed into a separate new estate, the settlement officer must take special care that the boundary between the alluvion and the settled estate is accurately mapped and recorded in the settlement proceedings, so as to preclude all future doubt or dispute on the subject.

16. Should the alluvion have accreted to a dependent tenure, the dependent tenure-holder is entitled, on payment of a fair increase of rent to his superior landlord, to hold the accretion for the term of his engagement. The settlement officer is required by section 2, Act XXXI of 1858, to ascertain and record, according to the rules prescribed by Regulation VII of 1822, the rights of any under-tenant in any alluvial land, but the settlement officer should treat with the superior landlord as the party responsible for the Government share of the rent. Should the zemindar prove recusant, the settlement may be made with the under-tenant, or the lands be held under direct management, or let in farm and treated as a separate estate, as may be most expedient.

INSTRUCTIONS FOR DEARAH SURVEY AND SETTLEMENTS.

SURVEY—(referred to in clause 12 above).

I.—The object of the present dearah survey is to identify on the ground the line which is shown in the maps of the previous revenue survey as the line of contract between the land and the river, which will be here called

the outer line.

Where the river has cut away lands since the previous survey, this line will fall in water, and the old boundaries of villages, as shown by the previous maps to have existed between it and the present bank of the river, cannot therefore be relaid on the ground, but they must be shown in the new map by red dotted lines.

Where, on the other hand, the river has receded from its former course, this outer line will fall in land, and the Deputy Collector will have to relay it on the ground.

II.—As much of the land shown in the previous survey maps has been subjected to fluvial

Base line

action since those maps were made, it will be impossible to relay the outer line without starting the present survey from a base line on land which has not been subject to fluvial action since the last survey, on which base line must be certain points which are unmistakably identifiable with points shown on the maps of the last survey. But the Deputy Collector will be careful to fix his base line as near as he can to the said outer line, provided that one base line shall be on land which has not been affected by fluvial action since the last survey, and which appears to be reasonably safe from being so affected for some years.

III.—In making surveys in districts where a previous survey has left permanent boundary marks, the Deputy Collector will connect his survey with the nearest boundary pillars shown in the professional maps. But in surveying in districts such as Tipperah, where there are no such boundary pillars, the Deputy Collector will have to find out his own starting points. He should connect his survey with some existing mark of the great trigonometrical survey pillar or some other permanent point; any information required to enable him to do so will no doubt be supplied from the Surveyor-General's Office on the application of the Collector.

IV.—The Deputy Collector will issue detailed instructions to his surveyors and amins for relaying so much of the boundaries of villages between the base line and outer line as may be necessary for relaying the latter; for testing the accuracy of the work done on the field, and the agreement of the boundaries relaid with those shown in the maps from which they are relaid; for surveying the accretions, and for showing them on the new maps, which will, of course, contain the base line by which they can be connected with the old maps as well as the outer line.

V.—The new maps so prepared will show at what places diluvion or accretion has occurred since the last survey. As regards diluvion, the Deputy Collector will have to take no further steps while in the field; but as regards alluvion he will have to lay down on the ground the line of contact between the land and the river as it existed at the previous survey. He will proceed to do this in the following manner.

VI.—The Deputy Collector's map will show him where the boundary between any two villages struck the river at the time of the last survey. He will fix the position of every such striking point by its bearing and distance from any two of his survey stations, and will demarcate it on the ground. He will then cause to be relaid on the ground the outer boundaries of villages from point to point. This will be done from thak maps. If in any case the thakbust and the professional maps are found to disagree, the Deputy Collector will show the disagreement in his map, but will accept the boundary obtained from the professional map to be correct. If the Deputy Collector should require the data of the original professional survey of any village boundaries, in cases of material disagreement between the thak and professional maps, the Collector should apply for them from the Office of the Superintendent of Revenue Surveys.

VII.—Up to this point the duty of the Deputy Collector will have been to relay on the ground the boundaries exactly as they are shown in the maps of the previous survey without any reference to possession as now found to exist. But when he comes to the new lands, *i.e.*, lands formed by the recession of the river since the previous survey, he must demarcate boundaries and measure according to possession, as his settlements must be made with the parties in possession.

VIII.—The amin employed in the measurement of the alluvial accretion, which is in excess of the land shown in the old maps, will measure separately the lands which are in possession of each separate proprietor. When the demarcation of boundaries on such land is completed, the amin will proceed, under section 11 of the Bengal Survey Act V of 1875, to obtain signatures of persons who pointed out boundaries to him, will then submit his original map to the Deputy Collector, keeping a copy on which to enter the different descriptions of cultivated and uncultivated lands, with the measurement of which he will proceed. The Deputy Collector, on receiving the amin's map, will proceed, under section 12 of the Survey Act, before he finally confirms the boundaries shown in the amin's maps.

IX.—In order to make the present survey useful for future purposes, the Deputy Collector will erect permanent boundary marks along the outer line where the village boundaries struck the river at the previous survey, and also at such triple junction points between the base line and the outer line as he considers necessary.

X.—The Deputy Collector will, while in camp, try to realize from the proprietors of estates in a summary manner, without going through the elaborate process laid down in the law (Bengal Act V of 1875), the costs of erecting these pillars. When he fails to realize summarily while on the spot, he will follow the procedure laid down in the law, in view of which he should be careful to issue the notice required by section 15 of the Act before erecting any permanent boundary marks.

XI.—In the case of estates which were the property of Government at the previous survey, they are in many cases settlement maps prepared subsequent to the survey. Some of these estates may have been sold to, or permanently settled with, private persons, while others may still belong to Government. But whether they are in the hands of Government or of private persons, it will be necessary in such cases to compare, not the maps of the previous revenue survey, but the last settlement maps with the present maps, in order to determine the loss or gain of land to be dealt with by the Deputy Collector. Accordingly, when the Deputy Collector is about to begin his operations in any district, he will call on the Collector to furnish him with a list of such riparian or island estates as have been sold by Government or have been permanently settled since the previous survey, and also such estates as are at present under temporary settlement. This list, together with the last settlement maps of such estates, will be forwarded to the Deputy Collector, who will consult them in dealing with the alluvions shown in his new maps.

XII.—The Deputy Collector will also call on the Collector to furnish him with a list of all estates which are known to have entirely diluviated since the previous survey, the name, number and jama of each estate, and the number of the thak and survey maps containing them. It will be forwarded to the Deputy Collector, who will examine his maps, and see if any of the lands contained in those estate have re-formed in their original sites, as shown in the previous survey maps. On meeting with any such case of re-formation, the Deputy Collector will report the fact to the Collector, who will take such steps as may be necessary.

SETTLEMENTS.

XIII.—When the new map shows that land has been added to the area of a village since the previous survey, or (in the case of an estate formerly the property of Government which has been sold on a Permanent Settlement to a private individual after the previous survey under Act IX of 1847 took place) since the date of such sale, the Deputy

Assessment to be imposed on excess area according to rules in force.

Collector shall at once assess the same according to the rules in force for assessing alluvial increments, and shall report his proceedings to the Collector for report to the Board, as required by section 6, Act IX of 1847. Provided, however, that the Deputy Collector shall assess no accreted land which appears to him to occupy the site of land which formed part of the estate at the time of the settlement (even though such accreted

Government order No. 2947, dated 29th November 1878, to Board of Revenue.

land may not have been in existence at the time of the previous survey, and may have reformed since that survey was made) unless the proprietor shall have abandoned his proprietary right to land forming on that site by accepting a deduction from the amount of revenue originally assessed on the estate, on account of the decrease of its area by dilavion. Provided also that the Deputy Collector shall assess no land which has been added to a village of an estate which is held under a temporary settlement of which the term has not expired.

XIV.—The Deputy Collector shall immediately report to the Collector every case in which

Excess area to be left unassessed to be immediately reported.

he considers that lands which have been added to an estate since the previous survey should be left unassessed in accordance with the first proviso of the preceding rule and shall submit with his report such maps and papers as shall be necessary to enable the Collector to form an opinion on the case. The Collector shall submit a similar report with his own opinion to the Commissioner, who shall pass such orders as he may think proper.

XV.—No proceedings on account of an accretion need be taken when the area which has been added to an estate does not exceed 10 acres, unless such area be more

Inconsiderable accretions need not be assessed.

than one-twentieth of the area shown by the previous maps. Thus in an estate of which the area is 100 acres by the former survey an accretion of six acres would be settled, while in an estate of 300 acres an area of 10 acres would not be noticed.

Accretions on site of one estate held as part of another to be assessed.

Government order No. 2947, dated 29th November 1878, to Board of Revenue.

XVI.—Whenever lands which have been accreted on the site of one estate are found to be held in possession as part of another estate, the Deputy Collector shall proceed to assess such lands, and to settle them with the party in possession.

XVII.—When the new map shows that land has been washed away from, or lost to any

Procedure on ascertainment of excess of area lost to an estate.

Government order No. 2065, dated 9th July 1868, to Board of Revenue.

Government order No. 1733, dated 24th August 1866, to Board of Revenue.

Government order No. 2947, dated 29th November 1878, to Board of Revenue.

village, he shall cause a notice to be served on the proprietor of the estate, intimating that he is entitled under the law to claim a deduction from the sudder jama of his estate if he desires it, and explaining that if no deduction be now made on account of the area lost, on the occasion of the next survey being made the area of the estate as then found to exist will be compared, not with the area as found by the present survey, but with the area as shown by the survey which last preceded the present survey. The notice should also intimate that no claim to deduction from the sudder jama will be admitted unless it is made within three months of the date of the notice.

XVIII.—No deduction shall be made from the sudder jama unless the zemindar desire

Optional with zemindar to accept deduction from sudder jama.

give effect to the deduction under that section.

XIX.—It is most important that the survey and settlement work shall go on simultane-

Changes occurring between survey and settlement.

in the latter.

XX.—As soon as possible after the close of each field season the Deputy Collector will

Result to be reported at the end of each field season.

submit a full report of his proceedings, giving information as to the results ascertained, as to areas gained and lost, the amount of additional assessment imposed, and reduction of sudder jama

allowed, and all other points of interest. The report, with the Commissioner's review of it, will be submitted to the Board.

SECTION XIII.—RE-SETTLEMENTS.

1. When a detailed settlement of an estate has once been made, it will not be necessary in all cases to go through the same process again on the expiration of the term of settlement, and it ought not to be necessary in any case in which the settlement records and maps have been corrected from time to time so as to represent the existing state of things. If, however, at the first settlement there was an undue proportion of waste, or if the estate is one exposed to alluvial action, and if the measurement and settlement records have not been corrected from time to time so as to represent the existing facts, measurements may be called for to ascertain the extent of increased cultivation or of change.

2. Inquiry should always be made on the expiration of a settlement to test the propriety of the existing rents or rates of rent. If this inquiry shows that no change of rents is necessary, and no other material change in the condition of the estate has taken place, detailed settlement proceedings need not be gone through but a report in the usual form, based on the last settlement, should be submitted for orders, unless the re-settlement is one which the Collector himself is competent to sanction.

3. Under section 2, Regulation VII of 1822, zemindars, farmers, or any other malguzars, holding on after the expiration of the term of their engagements, are responsible for the revenue at the rate assessed in the last settlement, and cannot be made to pay a higher amount for any period anterior to the service on them of a former notice (as provided in clause 6 of the section quoted) requiring them to engage for payment of such amount.

4. Where, however, a settlement has fallen in, or is likely to fall in, before arrangements for fresh settlements are, or can be, completed, the Collector should, if the estate belong to an individual, ordinarily settle it summarily year by year, securing in the engagements any increase of revenue which the extension of cultivation or other enhancement of assets, ascertained by summary inquiry, may seem to justify. If the estate be the property of Government, it should, as a rule, be taken under khas management, &c. (*vide* clauses 1 to 4, section I, Chapter III of volume I of Board's Rules).

5. When a re-settlement becomes necessary in consequence of the default or recusancy of a lessee or on expiry of the lease, any resident cultivators who may have been located by him should, before the lands are leased to another party, be secured in their tenures by the preparation of a rent-roll of their lands after the manner of the original settlement; and the circumstances under which they were located by the lessee should receive full consideration. But no lessee has the right to create tenures extending beyond the term of his own engagement.

SECTION XIV.—CANCELMENT OF LEASES AND ATTACHMENT OF FARMS.

1. There is no law which sanctions the cancelment of a farm during the year. The practice, however, has long been to cancel a lease at once on the occurrence of a balance, when this course is judged expedient instead of waiting till the end of the year. It is desirable that this practice should be continued. The difficulty presented by the law is met by a clause in the farmer's kabuliyat providing for the voidance of the lease on the occurrence of default. A kabuliyat, and, subject to the proviso contained in clause 4, section X, a security bond containing this and other requisite stipulations, in the form hereto annexed (Nos. 7 and 8), should be invariably executed when a lease is granted.

2. Much must be left to the discretion of the Collector in respect to the cancelment of leases. It may sometimes be expedient to exercise this power immediately on the occurrence of an arrear; but, on the other hand, it may be desirable for the interests of all concerned to give the farmer an opportunity of retrieving his position by paying the balance and providing sufficient guarantees against future default.

3. In regard to cases coming under section 4, Regulation IX of 1825, the following rule should be adopted:—If a notification threatening annulment of engagements has been issued, and the lessee fail to make good the arrear within the term fixed, then, as soon as the month of grace allowed by the section cited expires, the Collector should declare, by a formal proceeding, that the settlement is annulled. Until this is done he is not warranted in refusing to accept payment of the arrear by the defaulter. If the Collector should think proper to allow further time for payment, he may suspend the order of annulment.

SECTION XV.—SETTLEMENT PROCEEDINGS AND REPORT.

1. Every settlement should be reported as soon as it is completed through the proper channel to the sanctioning authority. The report of the officer making the settlement will, if possible, be in English in the forms given in rule 36, Chapter VI of the Tenancy Act rules, and it will be accompanied by an abstract of the information contained in the settlement proceedings in the form given in the Board's instruction under that rule, and, in the case of resumed estates, by the resumption decree. When the settlement is of a resumed revenue-free estate, and comprises subordinate rent-free tenures, it should be certified in the report that the prescribed notices were duly issued, and the cases disposed of under the provisions of section 5, Regulation IX of 1825; and also, in cases in which the settlement officers have upheld such tenures, that copies of the decisions were transmitted to the Commissioner of Revenue as required by section 4, Regulation III of 1828. The name of the estate, its area and revenue, the party admitted to engage, the term of settlement, and the date from which it takes effect, should all be noted on the margin of the report. It should also be noticed what arrangements are found existing, or have been made, as to the dates of payment of instalments of rent and revenue, and whether they are adapted to local agricultural circumstances, such as the number and description of crops and the period of harvests.

2. In settlement proceedings and reports wherever the rate of rent per bigha is mentioned, the calculation should always be made on the standard bigha of 14,400 square feet in Bengal and in Behar the bigha of the pergunnah as given on the revenue survey 4 inches to the mile maps, the exact extent of which should be stated in square yards. When it is necessary, in a Bengal settlement, to mention any other local standard than the standard bigha, the equivalent in standard Bengal bighas should invariably be given as well in the margin.

3. Should any objections have been made to the settlement, the reasons for rejecting the petitions and for confirming the settlement should be recorded on the back of the English abstract. This abstract should remain with the record, together with another in the vernacular.

4. In reporting for confirmation settlements which have been carried out by a Deputy Collector, it will be necessary for the Collector to report his own opinion in full upon the question of fairness of the rents or rates of rent, mode of settlement to be adopted, and other important points with special reference to the rules in force. Similarly it will be incumbent upon the Commissioner in all cases to add his own remarks when forwarding the papers for the Board's orders.

5. Settlements* of fisheries, whether the property of Government or otherwise, may be confirmed as follows, (a) if the settlement is at a jama not above Rs. 200, and for a period not exceeding five years, by the Collector, (b) if at a jama not above Rs. 1,000, and for a period not exceeding 10 years, by the Commissioner, (c) other cases by the Board. But the form of report required by the foregoing rules in the case of settlements of landed property need not be submitted for the settlement of fisheries. It will be sufficient to show in the report (1) the number of the fishery mahal in the towjil, (2) the geographical limits of the right, (3) the term of the lease, (4) the rent, (5) brief explanation of the nature of the fishing (*viz.*, the fish caught and the means used to catch them), (6) the position of the lessee (*e.g.*) whether he is himself a fisherman or a speculator who intends to sublet to the actual catchers of fish), and (7) the mode of settlement adopted, whether by sale to the highest bidder or otherwise.

SECTION XVI.—CONFIRMATION OF SETTLEMENT.

1.* When the assets are ascertained and recorded under Chapter X of the Tenancy Act, the decisions of the settlement officer are appealable to the Special Judge, and are not subject to confirmation by the revenue authorities; but the confirmation of the revenue authorities is necessary to all proceedings which are not decisions, and to any proceedings subsequent to the ascertainment of amount of assets such as selection of settlement-holder, amount at which settlement is to be made, provision for maintenance of the record, term of settlement, &c.

2. The following rules have been laid down by Government determining the authority of revenue officers of different grades to give final confirmation to settlement proceedings not being decisions appealable to the Special Judge.

1. In supersession of previous orders on the subject, the Lieutenant-Governor is pleased to order that the following revenue authorities, respectively, shall be competent to sanction settlement proceedings under Regulation VII of 1822 and other laws:—

- | | |
|--|-------------------------------------|
| I.—Settlements for a term not exceeding five years of churs }
the Government revenue assessed on which does not exceed Rs. 200, provided that the settlement is made with resident raiyats or others entitled to a settlement, and not farmed ... | } The Collector. |
| II.—Summary settlements for one year of estates the revenue assessed on which does not exceed Rs. 500, that is, summary extensions for one year of the expiring settlements of such estates owing to detailed enquiries for a regular settlement not being completed; provided that if it is proposed so to extend such a settlement for a second year, the sanction of the Commissioner will be required. | |
| III.—All other summary settlements of estates of which the Government revenue does not exceed Rs. 5,000 for two years or less. | } The Commissioner of the Division. |
| IV.—Regular settlements of estates on which the Government revenue assessed does not exceed Rs. 5,000, provided that the settlement be made after detailed enquiry with persons entitled to settlement, or directly with the local under-tenants and raiyats and that it be not a farming settlement (<i>vide</i> Circular order No. 5 of July 1878)—
(c) in the case of chur estates only, for not more than ten years. | |

* Attention is invited to this by which it is intended, notwithstanding the Tenancy Act provisions, to retain control of settlements in the hands of the revenue authorities.

- V.—Summary settlements which are beyond the competency of Commissioners. }
 VI.—Temporary settlements beyond the competency of Commissioners in which the Government revenue assessed does not exceed Rs. 25,000. } The Board of Revenue.
 VII.—Permanent settlements to which the proprietors have a statutory right. }

2. Temporary settlements in which the Government revenue assessed exceeds Rs. 25,000, and proposed Permanent Settlements to which the proprietors have no statutory right, will be reported for the orders and final sanction of Government.

3. The foregoing rules are applicable to the settlement or re-settlement of individual estates or parts of estates; but settlements of whole districts or pargannahs, or other subdivisions of districts, should be made and engagements taken subject to the final approval of the Government of India, to which, through the Government of Bengal, the proceedings will be reported in due course for such approval.

2. On the confirmation of a settlement by competent authority the Collector should put the settlement-holders in possession, if they are not already in possession, of the estate or estates settled with them.

3. All orders passed by any authority regarding settlements will be open to appeal according to law, and to revision by superior authority without appeal, unless such revision by executive authority is barred by law.

4. At the close of every quarter the Collector shall submit to the Commissioner a return* in the form annexed (Appendix form No. 4) of settlements sanctioned by him under the preceding rules. The Commissioner shall forward this return to the Board with another, in precisely the same form, of settlements sanctioned by himself. The return contains specimen entries, showing the particulars which should be furnished by the local officers.

5. After the confirmation of the settlement of an estate has been received, the estate, whether it is to be held khas or not, will no longer be shown as "under settlement" in Return No. VIII.

APPENDICES.

No. 1.

[SEE SECTION I, CLAUSE 12.]

Statement showing estates in the district of _____ to be settled during the year 18____, as to which an order for Government is solicited for survey and the preparation of a record-of-rights under section 101 of Act VIII of 1885.

Name of estate.	Number on revenue roll.	Revenue.	Date on which present settlement expires.	Particulars to be recorded at survey under section 102.

No. 2.

[SEE SECTION I, CLAUSE 14.]

ESTIMATE OF ESTABLISHMENTS REQUIRED FOR SETTLEMENT
WORK TO BE PERFORMED DURING THE YEAR 188 -8 IN
THE DIVISION OFPART I.—*Estates of which the settlement has been, or is expected to be, taken in
hand before 1st April next.*

NOTE.—Every estate estimated to consist of 1,000 acres or more must be shewn separately; all smaller estates may be shewn together, the number of them only, and not the names, being given in column 1.

1. Estates.
2. Area in acres.
3. Area already measured.
4. Area which it is proposed to measure in 18 -8 by regular establishment.
5. Ditto by special establishment in 18 -8, column 9.
6. Actual expenditure up to beginning of current year.
7. Estimated expenditure of current year 18 -8
8. Present establishment, including contingencies.
9. Proposed ditto ditto.
10. Period for which required.
11. Estimated total cost of settlement.
12. Estimated average cost per acre.
13. Estimated increase of revenue.
14. Remarks.

No. 2A.

[SEE SECTION I, CLAUSE 14, p. 356 ante.]

PART II.—*Estates of which the settlement will not be taken in hand till after 1st
April next.*

NOTE.—Every estate estimated to consist of 1,000 acres or more must be shewn separately; all smaller estates may be shewn together, the number of them only, and not the names, being given in column 1.

1. Estates.
2. Area in acres.
3. Area which it is proposed to measure in 18 -8 by regular establishment.
4. Ditto by special establishment in column 6.
5. Estimated expenditure of current year.
6. Proposed establishment, including contingencies.
7. Period for which required.
8. Estimated total cost of settlement.
9. Estimated average cost per acre.
10. Estimated increase of revenue.
11. Remarks.

No. 3.—[SEE SECTION III, CLAUSE 14, p. 362 *ante*.]

Table for converting local bighas of 14,400 square feet, or 1,600 square yards, into acres of 4,840 square yards.

	Local bighas.	Acres of 4,840 square yards.	Local bighas.	Acres of 4,840 square yards.	Local bighas.	Acres of 4,840 square yards.
1	0.330	38	12.540	75	24.750	
2	0.660	39	12.870	76	25.080	
3	0.990	40	13.200	77	25.410	
4	1.320	41	13.530	78	25.740	
5	1.650	42	13.860	79	26.070	
6	1.980	43	14.190	80	26.400	
7	2.310	44	14.520	81	26.730	
8	2.640	45	14.850	82	27.060	
9	2.970	46	15.180	83	27.390	
10	3.300	47	15.510	84	27.720	
11	3.630	48	15.840	85	28.050	
12	3.960	49	16.170	86	28.380	
13	4.290	50	16.500	87	28.710	
14	4.620	51	16.830	88	29.040	
15	4.950	52	17.160	89	29.370	
16	5.280	53	17.490	90	29.700	
17	5.610	54	17.820	91	30.030	
18	5.940	55	18.150	92	30.360	
19	6.270	56	18.480	93	30.690	
20	6.600	57	18.810	94	31.020	
21	6.930	58	19.140	95	31.350	
22	7.260	59	19.470	96	31.680	
23	7.590	60	19.800	97	32.010	
24	7.920	61	20.130	98	32.340	
25	8.250	62	20.460	99	32.670	
26	8.580	63	20.790	100	33.000	
27	8.910	64	21.120	200	66.000	
28	9.240	65	21.450	300	99.000	
29	9.570	66	21.780	400	132.000	
30	9.900	67	22.110	500	165.000	
31	10.230	68	22.440	600	198.000	
32	10.560	69	22.770	700	231.000	
33	10.890	70	23.100	800	264.000	
34	11.220	71	23.430	900	297.000	
35	11.550	72	23.760	1,000	330.000	
36	11.880	73	24.090			
37	12.210	74	24.420			

Table for converting acres of 4,840 square yards into local bighas of 14,400 square feet, or 1,600 square yards.

Acres of 4,840 square yards.	Local bigbas of 1,600 square yards.	Acres of 4,840 square yards.	Local bigbas of 1,600 square yards.	Acres of 4,840 square yards.	Local bigbas of 1,600 square yards.
1	3 025	38	114-950	75	226-875
2	6 050	39	117-975	76	229-900
3	9 075	40	121-000	77	232-925
4	12 100	41	124-025	78	235-950
5	15 125	42	127-050	79	238-975
6	18 150	43	130-075	80	242-000
7	21 175	44	133-100	81	245-025
8	24 200	45	136-125	82	248-050
9	27 225	46	139-150	83	251-075
10	30 250	47	142-175	84	254-100
11	33 275	48	145-200	85	257-125
12	36 300	49	148-225	86	260-150
13	39 325	50	151-250	87	263-175
14	42 350	51	154-275	88	266-200
15	45 375	52	157-300	89	269-225
16	48 400	53	160-325	90	272-250
17	51 425	54	163-350	91	275-275
18	54 450	55	166-375	92	278-300
19	57 475	56	169-400	93	281-325
20	60 500	57	172-425	94	284-350
21	63 525	58	175-450	95	287-375
22	66 550	59	178-475	96	290-400
23	69 575	60	181-500	97	293-425
24	72 600	61	184-525	98	296-450
25	75 625	62	187-550	99	299-475
26	78 650	63	190-575	100	302-500
27	81 675	64	193-600	200	605-000
28	84 700	65	196-625	300	907-500
29	87 725	66	199-650	400	1,210-000
30	90 750	67	202-675	500	1,512-500
31	93 775	68	205-700	600	1,815-000
32	96 800	69	208-725	700	2,117-500
33	99 825	70	211-750	800	2,420-000
34	102 850	71	214-775	900	2,722-500
35	105 875	72	217-800	1,000	3,025-000
36	108 900	73	220-825		
37	111 925	74	223-850		

*Table for reducing acres of 4,840 square yards to bighas of 1,600 square yards,
applicable to a cottah of 4 cubits of 18 inches to the cubit.*

	0	1	2	3	4	5	6	7	8	9			
0	0 0	3 025	6 050	9 075	12 100	15 125	18 150	21 175	24 200	27 225			
10	30 850	33 275	36 300	39 325	42 350	45 375	48 400	51 425	54 450	57 475			
20	60 500	63 525	66 550	69 575	72 600	75 625	78 650	81 675	84 700	87 725			
30	90 750	93 775	96 800	99 825	102 850	105 875	108 900	111 925	114 950	117 975			
40	121 000	124 025	127 050	130 075	133 100	136 125	139 150	142 175	145 200	148 225			
50	151 250	154 275	157 300	160 325	163 350	166 375	169 400	172 425	175 450	178 475			
60	181 500	184 525	187 550	190 575	193 600	196 625	199 650	202 675	205 700	208 725			
70	211 750	214 775	217 800	220 825	223 850	226 875	229 900	232 925	235 950	238 975			
80	242 000	245 025	248 050	251 075	254 100	257 125	260 150	263 175	266 200	269 225			
90	272 250	275 275	278 300	281 325	284 350	287 375	290 400	293 425	296 450	299 475			
100	302 500	800	1,115 0	1,100	3,327 5	1,600	4,340 0	2,100	6,352 5	2,600	7,865 0	3,100	9,377 5
200	685 0	700	2,117 5	1,200	3,630 0	1,700	5,142 5	2,300	6,655 0	2,700	8,167 5	3,200	9,680 0
300	967 5	800	2,420 0	1,300	3,932 5	1,800	5,445 0	2,600	6,957 5	2,800	8,470 0	3,300	9,992 5
400	1,250 0	900	2,722 5	1,400	4,235 0	1,900	5,747 5	2,400	7,260 0	2,900	8,772 5	3,400	10,285 0
500	1,532 5	1,000	3,025 0	1,500	4,537 5	2,000	6,050 0	2,500	7,562 5	3,000	9,075 0	3,500	10,597 5

No. 4.
Return No. XXXIII^a—Settlements sanctioned by the *during the quarter ending*
[SEE SECTION XVI, CLAUSE 4, p. 383 ante.]

Number	Name and description of estate, with number on General Register and mutuel and sudden jama of previous and present settlement, and term of present settlement.	AREA OF ESTATE IN STANDARDS BIGHAS.					Parties admitted to settlement with reasons for making it with them.	Remarks, explaining any considerable increase or decrease of area or jama, the arrangement made for the management of the estate, if it is to be held under direct management of Collector, and other points worthy of mention.
		Year of last previous settlement.	Cultivated at time of previous settlement and at present settlement.	Cultivable, not cultivated (as in column 4).	Not cultivable (as in column 4).	Total area (as in column 4).		
1	2	3	4	5	6	7	8	9
1	Mehal Gatsupore. No. on General Register, 150. Property of Government, resumed as an island chur by decree of 1825.	1848	Bgs. 700	Bgs. 200	Bgs. 100	Bgs. 1,000	....	The estate has lost 710 bighas by diluvion. The estate is cultivated by 100 rayats, of whom 80 have acquired a right of occupancy. The rates of assessment of the previous settlement were as follows:—
								Rate per bigha.
								1848.
								1878.
								Rs.A.P. Rs.A.P.
								1 0 0 1 0 0
								1 4 0 1 6 0
								1 6 0 1 2 0
								1 8 0 1 10 0
								These are the rates recorded as payable by cultivators. The enhanced rates are in consequence of increase in value of produce since last settlement. The majority of the rayats have signed the jamabandi in token of acceptance.
								The area has increased by accretion, but the cyclone has thrown most of the land out of cultivation, 100 rayats are now on the estate, and others are returning to it. The estate is covered with so-called <i>hodadars</i> , who claimed to have the rent of each tenure settled with them, and denied the right of the settle-
	Previous settlement, 1848; in farm on a jama of Rs. 1,000.	1878	200	50	40	290	To be held under direct management	
	Present settlement, 1878; gross rental, Rs. 1,500; to be held khas. Rents fixed for ten years.							
2	Chur Durvesh. No. on General Register, 1010. Property of Government, resumed as an island chur by decree of 1810.	1840	5,000	500	200	5,700	...	

To be held under direct management.

Previous settlement, 1840, with farmer on jama of Rs. 3,000.
Present settlement, 1879, gross rental, Rs. 3,000 to be held khas. Rents fixed for ten years.

1879 1,000 17,000 300 8,800

ment officer to fix the rent of their raiyats. Although these *haoladars* were created by the holders of a temporary farming lease, and as such have no right to be recognized by Government, it has been found that 20 out of the 30 claimants are *bond fide* reclaimers of the soil: they have therefore been recognized by the settlement officer. The area comprised in these 20 *haolads* is 5,000 bighas, and the following is a comparison of the rates adopted at the last and at the present settlement—

Haoladar's rates.

Rate per bigha.

	1840.	1879.
	Rs.&p.	Rs.&p.
Bestn	...	1 8 0 1 12 0
First class dhan land	...	2 0 0 2 4 0
Second do.	...	1 12 0 2 0 0
Cultivable waste	...	2 4 0 2 8 0

These rates have been fixed by deducting 20 per cent. from the rates assumed as payable by the raiyats to the *haoladars*. The raiyats' rates, whether assumed for the purposes of calculating the *haoladars'* rents only, or authoritatively recorded as payable by the raiyats who pay direct to Government, are identical as below.

The area held by raiyats not included in the under-tenures is bighas 3,000, thus assessed:—

Rate per bigha.

	1840.	1870.
	Rs.&p.	Rs.&p.
Bestn	...	1 12 10 2 1 7
First class dhan land	...	2 6 5 2 1 2
Second do.	...	2 1 7 2 6 5
Cultivable waste	...	2 11 2 3 0 0

The increase is owing to the general rise in value of produce, and to the construction of an embankment at the cost of Government, which has greatly increased the productiveness of the lands.

Eighteen of the twenty *haoladars* have accepted the settlement, two are believed to be about to sue in the Civil Court for reduction of the rents as recorded. Of the raiyats paying direct to Government (10), five have accepted the settlement and five refuse to agree on the ground that they are raiyats of the so-called *haoladars* whom the settlement officer has refused to recognise. The estate will be managed through a tehsildar and establishment. For correspondence about this settlement, vide Commissioner's letter to Board, No. , dated

No. 5.

Extracts from the Hon'ble the Court of Directors' letter No. 6, dated the 12th April 1837.

[SEE BENGAL GOVT. RULE 30, INSTRUCTION 13, p. 423 *post.*]

27. With regard to the practice which exists of forming assessments according to the value of the crops produced, and not according to the value of capabilities of the land—a subject which was noticed by us in our despatch of the 15th February 1833—this is a mode of assessment which we find by the proceedings under review continues to be observed in many districts in the Western Provinces—a practice which, as remarked by Lord William Bentinck must act as a check on industry and discourage cultivation.

33. You are aware that the practice existed at Bombay and Madras, as well as in Bengal, of making the assessment according to the produce, and not according to the value and capabilities of the lands, and that it was stated that the revenue could not afford to bear the change contemplated by our instructions on this subject. We trust, however, that this practice is generally discontinued at Madras, and Bombay, and that the prohibitory instructions which have from time to time been received from us on this subject will be kept in view during the progress of the new settlements in the Western Provinces and ultimately, put a stop to this very objectionable mode of assessment. It is the productive power of the land, and not its actual produce, that should be taken as the guide in making the assessment. By this mode the best description of encouragement is given to the cultivator to extend cultivation and raise crops immediately beneficial and profitable to himself; and such a system, we have on former occasions observed, and are still of opinion, would not ultimately be found detrimental to the interests of the State.

No. 6.

Register to be kept of particulars of newly-formed islands.

[SEE SECTION XII, CLAUSE 6, p. 375 *ante.*]

(1) Serial number; (2) Name of pergunnah; (3) Name of river; (4) Date of occupation of island with description of area and bearings; (5), (6), &c., Particulars of subsequent yearly enquiries; (7) Date of settlement.

No. 7.

Translation of Kabuliyat to be executed by the farmer of temporarily-settled Estate.

[SEE SECTION XIV, CLAUSE 1, p. 380 *ante.*]

To

THE

I , son of , resident of , pergunnah district of , do hereby execute this kabuliyat.

I take the farming settlement of mehal in zillah , Pergunnah , bearing towjih No. , at an annual sadar jama of Rs. for the term of years from to , on the security of , resident of

I shall collect the rents from the raiyats according to law and the terms of this engagement, and pay the Government revenue kist by kist according to the instalments noted at foot of this engagement. I shall not sell or cut any trees on estate, whether bearing fruits or not; and if through my negligence any damage is done to the estate, I shall be responsible for it. I shall not raise any objection to the payment of Government revenue on the score of inundation, drought, or any other providential visitation, neither will such objection be granted. *I shall not raise the rents of the raiyats for the lands settled with them beyond the amounts entered in the settlement jamabandi.* But the rents, if any, which I may be able to collect from waste lands cultivated through my own exertion will be mine until expiry of the lease. In the event of my dying during the continuance of the term of this engagement, the Government shall have power to settle the mehal with any one or with my heirs till the conclusion of the term of the original settlement, with the consent of my heirs and surety. I shall file without any objection during the currency of the lease any papers which the Government may require from me, and any omission to do this shall be dealt with according to law. I shall at the end of each year file the measurement chittahs of the estate with jama-wasil, talabbakee, and other collection papers which the Collector may require from me. The Collector shall have the power to cancel the farming lease if I become insolvent or allow my lease to be sold in execution of decrees. I agree also to perform the duties of a putwaree of this mehal in accordance with such rules as the Board of Revenue may prescribe; and be it known that without the sanction of the Collector I have not the power to transfer my rights as a farmer of the estate or sublet it to another, or make another a co-sharer with me. To the above effect, subject to the sanction of the Board of Revenue, I execute this kabuliyat.

No. 8.

Form of Security Bond for Farmers.[SEE SECTION XIV, CLAUSE 1, p. 380 *ante.*]

To

I _____, son of _____, resident of _____, pergunnah _____, zillah _____, execute this security bond.

The mehal _____, situated in zillah _____, is let in farm to _____ resident of _____ on receipt of a kabuliyat from him for _____ years from _____ to _____, at an annual sadar jama of Rs. _____.

I having become acquainted with the particulars set forth in the kabuliyat, voluntarily offer myself to be the surety of the farmer. I myself, and on behalf of my heirs, do hereby covenant to hold myself responsible for carrying out the provisions contained in the said kabuliyat and for the payment of the Government revenue. For the fulfilment of these conditions I pledge the undermentioned property, which is exclusively in my possession and enjoyment. In the event of the farmer defaulting in the payment of Government revenue and infringing any of the conditions set forth in the kabuliyat, I myself, my heirs and executors will be responsible, and the property pledged may be sold, and the proceeds thereof applied to the liquidation of arrears of the Government revenue and cesses. If the farmer happens to die within the term of the settlement, it shall be within the competence of Government to cancel the lease, and settle the mehal with any one else.

In the event of the estate being settled with the heirs of the farmer, with my consent, till the expiration of the term of the original engagement, this security bond will remain in force, and I myself, my heirs, and executors, will be responsible for the payment of the Government revenue and fulfilment of all the conditions set forth in the bond, and shall never be freed from the liability. I myself, my heirs, and executors shall have no power to grant, sell, pledge, or alienate in any way, directly or indirectly, the undermentioned property till the accomplishment of all the conditions set forth in the security bond. Any such grants, sales, pledges, and alienations, if made, shall be null and void. If the proceeds of sale of the property pledged be inadequate to meet the amount due by the farmer, Government shall have power to realise it by sale of my other movable and immovable property, whether held in my name or benamee. If any plea of objections be raised on that account by myself, my heirs and executors, they shall be invalid. I myself, my heirs, and executors will not be entitled to receive back the security bond during the currency of the farming lease, nor to act in contravention of the conditions set forth in it. To this effect I execute this security bond.

Schedule of Property.

No. 9.

Form of Kabuliyat to be used in temporary settlement of estates with owners.

I take the proprietary settlement of _____ for _____
 years, from 1st April _____ to _____, at an annual
 net revenue of Rupees _____, subject to the following
 conditions:—

- 1st—I shall be at liberty to sell, alienate, or transfer the whole or any share of the said estate subject to the terms of this settlement; but I shall remain liable for the revenue assessed thereon unless and until the transfer is registered under the provisions of Act VII (r.c.) of 1876.
- 2nd—I bind myself to respect the recorded rights possessed by the raiyats, under-tenants, village headmen, and others in the said estate.
- 3rd—I will not collect higher rents, than are recorded in the settlement papers as fairly demandable from raiyats, under-raiyats, and others, and I will pay the aforesaid amount of Government revenue kist by kist, according to the kistbundee noted at the foot of this engagement.
- 4th—At the end of the aforesaid period of settlement, I or my legal representatives shall have the right to a renewal of the settlement on the revenue that may be then fixed. If I do not take the settlement on the revenue that may be then fixed, I shall be entitled to receive malikana at the usual rates.
- 5th—I shall not ask for any abatement of revenue in consequence of inundation, drought, or any other calamities of the season, nor shall such requests, if preferred, be listened to.
- 6th—If any waste lands in the estate be brought under cultivation through my exertions, my right to receive the rents derivable therefrom without any increase of revenue will continue during the pendency of this settlement.

7th—I shall submit any papers that may be from time to time called for from me by Government, and will observe any instructions laid down by the Board of Revenue for performance of the duties of patwaree and for the maintenance and correction of the survey and settlement records without any objection, so long as this lease continues in force. If I do not do so, the provisions of the law bearing on the matter will be resorted to to enforce compliance with the aforesaid requisition.

8th—This settlement has been made with me in anticipation of, and subject to, the sanction of the superior revenue authorities, whose orders, if any, will be carried out by me with effect from the commencement of this lease. The settlement will not be valid unless it is sanctioned by such authorities or if it is set aside by them.

9th—Neither I, nor my heirs or representatives shall be at liberty to raise any objection to the remeasurement of the estate and reassessment of the revenue of the same after this settlement has expired.—
(Vide Circular Order No. 3 of April 1887.)

Schedule of Kists.

No. 10.

I.—Form of Kabuliyat of a Cultivator having a right of possession at a fixed rent or rate of rent.

This is the kabuliyat executed by

a raiyat of mouzah

in mehal

in pergunnah

zillah

holding a permanent right at fixed rent under the following conditions :—

In accordance with*

* [Here enter whether the rent payable on the holding has been determined in the course of settlement proceedings, by a decision of court, by mutual agreement, or otherwise.]

my holding consists of

(equal to

of land of the several descriptions enumerated below.

bighas
acres)

The boundaries of each plot of land comprised in my holding are given on the back of this kabuliyat. The jama of the aforesaid holding has been ascertained to be, and is confirmed at Rs.

I bind myself to pay this jama year by year to the person entitled to receive the rents of the mehal, according to the instalments specified at foot, and in return I will obtain a receipt for every sum paid as rent to such person as aforesaid.

I possess a right of permanent occupation in the lands now held by me at the rent specified in this kabuliyat. No one has power to evict me from such

The passage within brackets to be included or excluded, according to custom.

lands at will, or to enhance my rent on account of such lands, so long as I duly pay my rent. [I am entitled to

take and enjoy the fruits of existing trees, or of such trees as may be planted by me in future, within the area of my present holding. I have also a right to cut or sell every tree planted and reared by myself, or by my ancestors, on my present holding.] The rights declared by my pottah to vest in me will devolve on my heirs at my death.

Schedule.

Description of land.
 Area in bighas.
 Rate per bigha.
 Rent.
 Instalments in which rent is payable.
 Total area.
 Total rent.

Detail of Plots of Land comprised in the holding to which this Kabuliyat relates.

1. Number of plot according to settlement chitta.

Boundary—

2. North.
3. West.
4. South.
5. East.
6. Kind of land.
7. Rate per bigha.
8. Rent of plot.

No. 11.

II.—Form of Kabuliyat of a cultivator having a right of occupancy.

This is the kabuliyat executed by
 a raiyat having a right of occupancy in mouzah
 in mehal
 in pergunnah
 zillah
 under the following conditions:—

In accordance with *

* [Here enter whether the rent payable on the holding has been determined in the course of settlement proceedings, by decision of a court, by mutual agreement, or otherwise.]

my holding consists of _____ bighas
 (equal to _____ acres) of land of
 the several descriptions enumerated below. The boundaries of each plot of land comprised in my holding are given on the back of this kabuliyat. The jama of the aforesaid holding has been fixed at Rs.

I bind myself to pay this jama year by year until it is altered in accordance with the law, according to the instalments specified at foot, to the person entitled to receive the rents of the mehal, and in return I will obtain a receipt for every sum paid as rent to such person as aforesaid.

I possess a right of occupancy in the lands now held by me. Neither the Government nor the person with whom a settlement of the mehal may have been made has power to evict me from such lands at will. My rent may be enhanced, in accordance with the provisions of the law relating to such enhancement, but not otherwise. [I am entitled to take and enjoy the fruits of existing trees, or of such trees as may be planted by me in future, within the area of my present holding.] The rights declared by my pottah to vest in me will devolve on my heirs at my death.

Schedule and detail of Plots of Land comprised in the holding to which this Kabuliyat relates (the same as at foot of form No. 32).

No. 12.

III.—Form of Kabuliyat of a Cultivator not known to possess a right of occupancy.

This is the kabuliyat executed by

a raiyat of
mouzah
in mehal
in pergunnah
sillah

under the following conditions:—

In accordance with •

• [Here enter whether the rent payable on the holding has been determined in the course of settlement proceedings, by decision of a court, by mutual agreement, or otherwise.]

my holding consists of _____ acres)
bigahas (equal to _____
of land of the several descriptions enumerated below. The boundaries of each plot of land comprised in my holding are given on the back of this kabuliyat. The jama of the aforesaid holding has been fixed for the present at Rs. _____
I bind myself to pay this jama year by year according to the instalments specified at foot, till it is altered in accordance with the law.

Schedule and detail of Plots of Land comprised in the holding to which this Kabuliyat relates (the same as at foot of form No. 11).

No. 13.

Form of Kabuliyat to be executed by Malgoozars in Government Estates.

I _____, resident (raiyyat, under-tenant, or village-headman, as the case may be) of Government Estate _____ in the district of _____ execute this engagement. I take the malgoozari settlement of the said Government estate, measuring bigahas _____ equal to acres _____ for the term of _____ years from the year _____ to the year _____ at a net annual jama of Rs. _____.

2. The rights conveyed to me under this engagement are those of malgoozar as hereinafter defined; and I bind myself to respect the recorded rights possessed by the raiyats, under-tenants, village-headman, as the case may be, in the said estate.

3. I will collect the rents from the raiyats, under-tenants, as the case may be, and pay the Government revenue, kist by kist, according to the instalments noted at the foot of this engagement; and I will raise no objection on the score of drought and inundation or any other providential visitation; nor will such objection be allowed. But the rents, if any, which I may be able to collect from waste lands in the estate will be mine until the expiry of this lease.

4. I will file without objection during the currency of my lease any papers which the Collector may require from me. If I do not, the Collector will have power to take action against me according to law.

FORM OF AMIN'S FINAL REPORT—SEE SECTION III, CLAUSE 21, p. 363 *ante*.

No. 15.*

1. Date of appointment and of arrival at the estate.
2. The boundaries of the estate; mention disputed boundaries if any.
3. System of measurement followed, whether by acres or bighas; if by bighas, mention exact size of the bigha in square yards, also number of haths to the laggi; and whether the length of the laggi is disputed, whether the measurement was conducted by pole or chain, by plain table, or compass or otherwise; compare area resulting from measurement with results of any previous survey.
4. Description of land comprised in the estate, whether high or low, poor or rich, or jungle; describe also the classification of land known to the villagers, giving vernacular names and description.
5. Mention of holdings claimed rent-free, their extent, and character.
6. Land not fit to be assessed.
7. Date of completion of survey and of filling survey papers and maps.
8. Average number of acres measured daily.
9. Average cost of measurement in acre.
10. Explanation when necessary of deficient outturn of work per day or of excessive cost.
11. Mention how much of the measurement was tested, by whom, and results of testing.

* In this form no mention of rates and status of raiyats has been made. These are subjects for the settlement officer's enquiry. The amins should not be allowed to ever enquire into them. Their remarks on these points are of no value and the permission to enquire only opens a door to bribery.

21.

Statistical Statement (Part I) of Pergunnah District Season 188 - 8 .

CLASSIFICATION OF CULTIVATED AREA.																																
				1	2	3	4	5																								
Names of villages and estates.				Area by summation of fields.	By soil.					By irrigation.																						
					Total cultivated area in acres.	Upland.	Lowland.	Other kinds.	Total irrigated area.	From wells.	From canals.	Rivers.	Abars or tanks.	Non-irrigated.																		
Serial number.	Survey number.																															
6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	AGRICULTURAL STATISTICS.											
OF CULTURABLE AREA.											OF NOT CULTURABLE AREA.															AGRICULTURAL STATISTICS.						
New fallow.	Acres.	Old fallow.	Acres.	Groves.	Acres.	Bush.	Acres.	Other kinds (if any).	Acres.	Total culturable area.	Village site.	Site of temples and burial ground.	Acres.	Unculturable waste.	Acres.	Tanks.	Acres.	Rivers.	Acres.	Unculturable hills or churs.	Acres.	Government roads.	Acres.	Other roads.	Acres.	Other kinds of unculturable area.	Total of not culturable area.	Masonry.	Kartshen.	Pools.	Kutchas.	Houses.

21 (a).
 Statistical Statement (Part II) of
 , Pergunnah , District
 Season 188 -8 .

CLASSIFICATION OF TOTAL AREA BY FISCAL ARRANGEMENT.

REVENUE-PAYING.										REVENUE-FREE.																							
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20														
Rent-paying.			Not rent-paying,							Held by proprietors.										REMARKS.													
Total rent-paying.			Cultivated.			Not cultivated.				Rent-paying.			Not rent-paying.				Total.		Grand total.														
			Held by proprietors as sir or otherwise.			Held by raiyats or tenure holders rent-free.		Held by proprietors.		Held by such as degars, bands, &c.		Cultivated.		Not cultivated.		Total.																	
Total rent-paying.			Held by proprietors as sir or otherwise.			By gift of by as brah. services matter, &c.		In lieu of by degars, as a go. rat pas-ban, &c.		Held by proprietors.		Held by such as raiyats.		Total revenue-paying, i. e., total of 3 and 9.			Cultivated.			Not cultivated.		Total.		Cultivated.		Not cultivated.		Total.		Occupied for public purposes.		Total revenue-free, i. e., total of 18, 19 and 20.	

21 (c).

Comparative statement of rentals of Estate

, Pergunnah

, District

RENT ROLLS.							REMARKS EXPLANATORY OF INCREASE OR DECREASE.		
YEAR.	TENANT'S LANDS.		SIR.		CULTIVATED BY PROPRIETORS, BUT NOT SIR.			Sairat income	TOTAL.
	Cultivated area.	Rent.	Cultivated area.	Rent.	Cultivated area.	Rent.			
1829	..								The patwari may be called upon to fill up this statement from his jammabandi and jama-wast-baki accounts for the entire period or for the years for which the figures are available.
1880	..								
1281	..								
1282	..								
1283	..								
1284	..								
1285	..								
1286	..								
1287	..								
1288	..								
1289	..								
1290	..								
1291	..								
1292	..								
1293	..								
According to new settlement		..							If figures are not available without inquisitorial proceedings this statement need not be filled up.
..		..							

The patwari may be called upon to fill up this statement from his jammabandi and jama-wasil-baki accounts for the entire period or for the years for which the figures are available.

If figures are not available without inquisitorial proceedings this statement need not be filled up.

Rules of the Local Government bearing on this Chapter with Board's instructions.

Under the powers conferred by section 189, the Local Government has framed the following rules to regulate the procedure to be followed by the Revenue officer in discharge of the duty imposed upon him by the provisions of this Chapter :

General.

1. In carrying out the following rules Revenue-officers shall have regard to the instructions of the Board of Revenue for the guidance of Revenue-officers, so far as such instructions are consistent with the rules herein prescribed under Act VIII 1885.

2. Except where otherwise provided for by law or by these rules, all proceedings and orders of Revenue-officers, passed in the discharge of any duty imposed upon them by or under this Act, shall be subject to the supervision and control of the Board of Revenue; and the orders of each Revenue-officer under this Act shall be subject to the supervision and control of the Revenue-officers to whom he may be declared by the Board of Revenue to be, for the purposes of the Act, subordinate.

The Collector and the Commissioner in whose jurisdiction operations under these rules are in progress shall be entitled to inform themselves of the nature and progress of such operations.

Board's instructions.

Under this rule assistant Superintendents of the survey department appointed to be revenue officers are declared to be subordinate to Deputy Superintendents of the Survey Department appointed to be revenue officers. Assistant settlement officers are declared to be subordinate to Settlement Officers and Settlement Officers are declared to be subordinate to the Director of the Agricultural Department as representing the Board of Revenue or to the Commissioner, or Collector as the Board shall in each case direct.

3. Where no other mode of service of notice is prescribed by the Tenancy Act or by these rules, service shall be effected in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, if the notice is addressed to only one person, and if it is addressed to a number of persons occupying or owning land in the same village, the notice shall be served by proclamation and beat of drum, and by posting it in the presence of not less than two persons on some conspicuous place in the village, and also by fixing it up in the village office, if any, where the rent is usually paid.

CHAPTER VI.—RECORD OF RIGHTS AND SETTLEMENT OF RENTS.

Powers of Revenue-officers.—Section 189.

1. Revenue-officers appointed to be settlement-officers or Assistant Settlement-officers for the purpose of making surveys, records of rights, settlement of rents, determination of proprietors' private lands, and such like proceedings, or any one or more of them under the Tenancy Act, are hereby vested with all powers exercised by a Civil Court in the trial of suits, and with the powers mentioned in section 189 (1) (a), (b) and (c) of the Tenancy Act, VIII of 1885.

2. Deputy Superintendents of Survey and Assistant Superintendents of Survey employed in operations under these rules are hereby declared to be Revenue-officers for the purposes of performing any duty imposed upon them by these rules, or by instructions, consistent with these rules, issued by the Board of Revenue. They are hereby vested with the powers specified in section 189

(b), provided that an Assistant Superintendent shall not exercise the powers vested in a Superintendent under the Bengal Survey Act.

Procedure for Cadastral Survey and Record of Rights.

3. The following processes will ordinarily be comprised in a cadastral survey, record of rights, and settlement of rents :—

- I.—Demarcation of boundaries.
- II.—Measurement.
- III.—Testing of measurement.
- IV.—Record of rents and rights.
- V.—Determination of fair rents on application, and, in certain cases, without application, of parties.

Demarcation of Boundaries before Cadastral Survey.

4. The demarcation of village boundaries shall be carried out in accordance with the definition of a village given in section 3 (10), and the boundary according to possession, where different from that demarcated as above, shall also be shown on the map.

Board's Instruction under Rule 4.

(a) Detailed instructions for the demarcation of boundaries of villages, estates, and tenures will be found in the chapter on Survey, in the Board's rules. It is to be remembered that all the powers which may be exercised by Collectors and Superintendents of Survey under the Bengal Survey Act V of 1875 may be exercised by Revenue Officers appointed to be Settlement or Assistant Settlement Officers under Rule 1, Chapter VI of the Tenancy Act Rules, and that Deputy and Assistant Superintendents of the Survey Department employed in any operations under these rules are vested with such powers as may be exercised by Superintendents and Assistant Superintendents of Survey under the Survey Act. These powers are, however, exercisable by virtue of the Tenancy Act, and not of the Survey Act, so that it is the Tenancy Act, and not the Survey Act which must be quoted and relied upon as the authority for all proclamations, proceedings and orders in survey or other operations conducted under Chapter X of the Tenancy Act. Progress reports of demarcations and cadastral work of record of rights and settlement of rents should be submitted in form Nos. 14 to 16 which are as follows :

14.

Statement of progress in demarcation work—see Rule 4, Chapter VI, Tenancy Act Rules, Board's Instructions.

Total number of villages to be demarcated.	DEMARCATED.		Number of village boundaries disputed.	NUMBER OF DISPUTES SETTLED.		Number of disputes remaining to be settled.	Brief explanation of nature of disputes and how they have been settled.
	To end of last report.	During period under report.		Up to date of last report.	During period under report.		

5. Boundary pillars of a permanent nature shall be erected at every point where the boundaries of three or more villages meet, and may be erected wherever the revenue officer considers it necessary to define by pillars the boundaries of estates or tenures, or of lands which have been the subject of dispute.

Board's instructions under Rule 5.

(a) When the survey is conducted by a professional party and in important surveys conducted by non-professional parties also, stone pillars should be erected at tri-junction points, viz., where the boundaries of three villages meet, as well as at disputed village boundary points, and may be erected to define the boundaries of estates and tenures in exceptional cases where the Settlement Officer considers them necessary. The cost of such pillars will be treated as part of the general expenses of the survey and record of rights.

(b). Theodolite stations in the interior of villages need not be permanently marked, and only such transverse stations on the village boundary line need be permanently marked as the Deputy Superintendent of Survey may think necessary.

(c). Temporary marks, meant to serve some immediate purpose, need not be of costly material. The zemindars and head raiyats should be called upon to erect them, and, in case they fail to comply, the marks must be erected and paid for.

(d). No officer engaged in survey or settlement operations is entitled to demand any labour or materials free of cost.

Measurement.

6. A field map of every village shall be prepared. It shall show the boundaries of every field separately assessed to rent, or of such plot of land as the instructions of the Board of Revenue for giving effect to these rules may lay down.

7. A field register or khasra shall be prepared at the time of survey in the following form, or such similar form as the Board of Revenue may direct.

8. In preparing the khasra and khatian, officers shall be guided by such instructions, consistent with these rules, as the Board of Revenue may issue for the purpose for giving effect to these rules.

(See Table next page.)

FORM OF KHASRA.

1	Number.	a	FIELD.
	Boundaries.	b	
2	Name of estate or share of estate.		
3	Name of proprietor and landlord, with parentage, caste and residence.		
4	Name of raiyat, father's name, caste, and residence.		
5	Name of under-raiyat, father's name, caste and residence.		
6	Area in bighas of square yards according to which measurement has been made.		
7	Area in village bigha of haths to the laggi.		
8	Method of irrigation.		
9	Non-irrigated.		
10	Crop.	Bhadol Rabi. Aghani	CROPPED AREA.
	Area.		
	Crop.		
	Area.		
	Crop.		
	Area.		
	Dofasli area.		
11	Class of lands.	DETAILS OF UN-CROPPED LAND.	
	Area.		
12	According to zemindar.	a	RATE OF RENT OF RAIYAT.
	According to raiyat	b	
	According to patwari.	c	
13	According to raiyat.	a	RATE OF RENT OF UNDER-RAIYAT.
	According to under-raiyat.	b	
14	Class of soil.		
15	REMARKS.		

The following instructions for the preparation of the *khassra* are prescribed by the Board under the preceding rule:—

1. When the survey is being made by the Survey Department, the officers of the Department will record areas of holdings, facts of undisputed possession and occupation of crops grown, of irrigation; they will not record the amounts of rentals of holdings, nor deal with any questions of right or status. Such questions will be enquired into and determined by the Settlement Officers alone. Similarly, when both the survey and settlement are carried on under the supervision of the Settlement Officer, the *amins* will not be permitted to record amounts of rentals nor to make entries regarding the status of tenants. These matters must be recorded under these rules by the Settlement Officer himself or in his immediate presence.

2. When the measurement is made with chain and compass or with plane table, column 6 will be sub-divided, thus—

Column 6.

	<i>a</i>	<i>b</i>	<i>c</i>	<i>d</i>	<i>e</i>	<i>f</i>	<i>g</i>
I.—When with compass.	Bearings of plot.	Measure of each length taken.	Mean length and direction.	Measure of each breadth taken.	Mean breadth and direction.	Area.	
II.—When with plane table.	North length.	South length.	Mean.	East length.	West length.	Mean.	Area.

3. The unit of measurement will be a field or the smallest plot separately assessed to rent under existing arrangements in occupancy of the same *raiya*. It is only the *raiya*s and the landlords or their agents themselves who can point out on the spot what area constitutes a field, and the boundaries thereof; and the *amin* must survey and map separately every plot which is pointed out to him as a separate field, however small it may be, and though two such fields are contiguous and belong to the same occupant, provided they are separately assessed. It will often be found that what is pointed out as one *kitta* contains several sub-divisions made by *kiyaris* or *ails* for the purposes of irrigation or of cultivation. In cases of this kind such sub-divisions or fields need not be separately measured.

Column [1 (b)] of the khassra.—In this column will be entered the name of the occupant of one field on each of the four sides of the field surveyed. It will not be enough to enter "east of the preceding field" (*number wālī purab*). The boundaries should be given as follows:—

North	...	...	...	...	A B's field.
South	...	...	...	...	C D's "
East	...	...	...	...	E F's "
West	...	...	...	...	This <i>raiya</i> 's field number so and so.

4. *Khassra column 2. Name of estate or share of estate.*—If the village contain more than one *mehal* or estate, the name of the *mehal* or estate to which the field belongs will be entered in this column.

5. If the *mehal* or estate has been divided by regular *batwara* or by private partition, the name of the *patti* to which each field belongs should be also entered in this column.

6. When a dispute arises as to the *patti* or *mehal* to which a field belongs, the *amin* will note the particulars of the dispute in his dispute list, and proceed with the measurement, leaving the column for the disputed entry blank to be afterwards filled up when the dispute has been settled by the Settlement Officer.

7. *Khassra column 3. Name of the proprietor and landlord with parentage and estate.*—In this column will appear name of the proprietor, his father's name, caste, residence, and if the proprietor has mortgaged his share or let it in farm, the name of the mortgagee or farmer will also appear in it.

Name of proprietor to be entered.

Mortgagees and tenure-holders.

8. In case the proprietors, mortgagees and tenure-holders are so numerous that their names cannot be conveniently entered in column 3, only the names of the person to whom rent is immediately payable and of the principal proprietor need be entered, a reference being made to the entries in the khewat, which show the names of all other landlords.

9. The names of owners of land held revenue-free from Government should likewise be shown in column 3, but the names of holders of lands claimed to be held rent-free from proprietors should not be shown in it. The latter will be entered in column 4, and their rent will be entered as zero. The rate of rent paid by the tenants of the latter lakhirajdars should be shown in column 13.

Column 4. *Name of raiyat.*—If all parties interested agree as to name of the occupant, the name as given by them will be entered. If there be a dispute as to who is the occupant, the amin will leave this column blank, note the allegation made by the (a) raiyat, (b) putwari if there be one or head raiyat, and (c) landlord in the list of disputes, and proceed with the measurement. He will send a list of such disputes to his immediate superior, who will refer them to the Settlement Officer; so that the latter may, if possible, proceed to settle the dispute while the survey is going on.

10. Land cultivated by the proprietor or farmer is to be entered in column 4 thus: "Cultivated by the proprietor or farmer," as the case may be. The Settlement Officer will subsequently determine, in accordance with rule laid down in the chapter on Record of Rights, as to each such plot, whether it is really *mitti*, *sir* or *zerat*, within the meaning of the Tenancy Act, or merely land cultivated by the proprietor, but

11. *Column 6. Area in bighas according to which measurement was made.*—In Bengal the area in standard bighas should be given in this column. In Behar, where the Bengal standard bigha does not prevail, measurement should, as a rule, be made either in acres or according to the standard bigha of the pergunnah as given in the revenue survey maps and reports. The area according to the standard by which the measurement was made should be given in column 6, and the extent of the standard adopted should be stated in square yards at the head of the column. The areas entered should be explained to the parties interested daily.

Column 7. *Area in local bighas.*—Where the local or village bigha on which rents have been assessed differs from the standard according to which the measurement is being made, the Settlement Officer must determine after enquiry what the extent of the local or village bigha may be. It is of great importance, with a view to the determination what are fair rents, that the exact length of the village *laggi* and extent of the village bigha on which rents are actually paid should be accurately ascertained. It is not enough to say the *laggi* is of so many "hāths": the length of the so-called hāth must also be ascertained. In some cases the "hāth" will be found to be a cubit of eighteen inches. In others it will be found that the "hāth" was determined by the length of a particular individual's forearm. Disregard of facts of this kind may lead to serious injustice in determining amounts of rental, should they be calculated at existing rates on areas resulting from survey. It therefore is important that the Settlement Officer should ascertain the number of square yards in the bigha on which rents are paid, and that he should take any difference that may exist between that bigha and the standard according to which his measurements have been made, into consideration in settling fair rents.

Where such difference exists, the area in the standard according to which the measurement is being made should, if the parties so desire, be converted into areas by the village standard, and be shown in column 7. Such conversion may not, however, be necessary in the case of each field. It may suffice to convert the areas of the total of holdings or of the totals of uplands and lowlands of each holding, and there may be cases in which such conversion may be altogether dispensed with. The Settlement Officer must exercise his discretion in each case as to how far such conversion may be necessary, bearing in mind the principle that it is necessary that the parties interested should be made to comprehend the proceedings and to understand the areas entered, and that differences in standard of measurements must be taken into consideration in the assessment of fair rents.

12. *Columns 1 to 11. Method of irrigation, crops, and details of uncropped land.*—When the survey is conducted by a professional party, the Survey Officers will fill up the columns relating to irrigation and compile statistics of cropped areas.

The following remarks should be borne in mind in filling up these columns.

All cultivated fields are either single-cropped or double-cropped. There are three descriptions of harvest known as—

Names of crops.

(1) *Bhadoi.*

(2) *Aghami.*

(3) *Rabi.*

Single-cropped fields are those which are found to grow in the year of survey only a *bhadoi* crop, such as *aus* dhan, or only an *aghani* crop, such as *amun* dhan, or only a *rabi* crop, such as wheat. Double-cropped which grow in the year of survey—

- (a) *Bhadoi* and *rabi*—Upland will be found generally to be of this kind; or
 (b) *Aghani* and *rabi*—Some dhan fields will be found to be of this kind, growing dhan, for instance, for *aghani*, and *tisi* or *khesari* for *rabi*.

It must be remembered that the single-cropped lands need not necessarily grow only one product. There may be two or more crops growing simultaneously; for *bhadoi*, for example, there may be growing at the same time in the same land *makai* and *urid*. If this land does not grow a *rabi* crop in the same year, it will still be *ekfasha*.

The names of all the crops grown in the year of survey should be entered. There may be *murwa* or *ous* paddy for the *bhadoi* harvest, and *jao*, *tisi* and *sarso* for the *rabi* harvest. It will not be enough to enter merely *aus* or *murwa* and *jao*. The entry must be made in this way :—

Bhadoi	...	...	...	...	Murwa or aus.
Rabi	...	...	...	...	Jao, tisi, sarso.

From these entries of crops grown, if carefully made, valuable statistics of the areas under each crop can be prepared.

13. Column 12 of the *khassra*; rate of rent of *raiayat*.—

(a) In this column the *amin* will if so directed by the Settlement Officer enter the rate of rent of *nagdi* lands as stated (a) by the landlord, (b) by the *raiayat*, (c) by the *patwari* if there be one or more by the village headman if there be no *patwari*. The *amin* will not make any attempt to determine what the rate actually is. He will merely record the rates as alleged by the three parties named above. It is not ordinarily necessary for the purposes of the Tenancy Act to determine the rate of rent except where questions arise regarding fixed rates. Such questions, when they have to be determined, will be determined by the Settlement Officer. If any of the three parties named does not attend at the time of measurement, or attends and says he is ignorant of the rate, the column regarding his statement may be left blank, and the reason may be noted in the column of remarks. Where there are no rates of rent, this column will of course be blank, and even where rent rates exist, it will be discretionary with the Settlement Officers to allow the *amins* to record them in the *khassra*, field by field as the measurement proceeds, or to record them himself when he visits the village under rule 25 as he may find most convenient, or they may with the Board's sanction be omitted altogether when not necessary for the purpose of preparing the record.

(b) If the land is held *bhaoli*, i. e., on a fixed proportion of the gross produce payable in kind, the word *bhaoli* will be written in this column. If alleged to be held *munkhap*, or *bhilmukta*, that is to say, on a lump rental of so much grain or so many rupees for an entire holding, and not so much per bigha, then the word *munkhap* or *bhilmukta* will be entered with particulars of the amount of rent.

(c) If the land is claimed to be held rent-free from the proprietor, the rate of rent, as stated by the *raiayat*, will be entered as zero, and a remark added thus—claimed rent-free "*muqi brahmoter*," "*svator detoter*," as the case may be. If the proprietor denies that the land is held rent-free, the rate, as stated by him, will also be entered.

14. Column 13 of the *khassra*; rate of rent of under-*raiayat*.—In this column the *amin* will enter the rate of rent paid by the under-*raiayat* as stated (a) by the *raiayat* (b) by the under-*raiayat*.

15. Column 14 of the *khassra*; class of soil.—In this column will be entered the class of soil as locally known and recognized by the cultivators of the district; not that to which the *amin* may have been accustomed in other districts. The Settlement Officer should ascertain what the local classification of the land is and should see that it is followed, a full description of it being given in his final report.

9. Khatians or abstracts of the particulars of every *raiayat's* and under-*raiayat's* holding, and, so far as may be, of the tenure of every tenure-holder and under-tenure-holder, shall be prepared in the following form, or such similar form as the Board of Revenue may prescribe :—

FORM OF KHATIAN.

*Khatian of A. B., son of C. D., of mouzah
the proper*

[illegible]

NOTE.—The heading of columns 10 and 11 will for khations of under-rainys be changed to “according to raiyat,” and “according to under-rainyat,” respectively. In the case of tenure-holders’ *khations*, the heading of column 11 will be “according to tenure-holder”; and in the case of under-tenure-holders’ *khations*, the heading of columns 10 and 11 will be altered to “according to tenure-holder” and “according to under-tenure-holder” respectively.

The following instructions are prescribed by the Board for the preparation of khatians under rules 8 and 9 :—

1. When the survey is being made by a professional party, the Survey Officers will make out the jamabandi slips or khatians, and they will make over the slips for each village to the Settlement Officer as soon after the amin has left the village as is possible. The Survey Officers will fill in columns 1 to 9 of the khatians relating to undisputed possession and occupancy, area, crops, irrigation, statistics, but need not concern themselves with total amounts of rentals of holdings, questions of possession and occupancy, which will be enquired into and determined by the Settlement Officers.

2. *Jamabandi slips to be made for each holding, tenure and under-tenure.* A separate jamabandi slip will be prepared for each tenure-holder, under-tenure-holder, raiyat, and under-raiyat in each estate; and if a cultivator holds in more than one share of a partitioned estate, a separate slip will be prepared for each share. The slips for tenure and under-tenure-holders will be separated by the Settlement Officer after determination of each tenant's status from raiyat's khatians, and will be separately filed.

3. *Items requiring separate slips.*—The following items also require separate slips :—

- (1) Groves (baghs).
- (2) New culturable waste.
- (3) Old culturable waste.
- (4) Village sites.
- (5) Unculturable or barren waste.
- (6) Tanks and nālas.
- (7) Roads belonging to Government.
- (8) Other roads.

4. Before the amin begins measurement, he should, if possible, obtain from the patwari or from the landlord's agent a list, alphabetically arranged, of all the raiyats and other occupants of land in the block which he has to measure.

5. As the measurement proceeds, the amin will enter opposite each occupant's name the alphabetical list of tenants or from the landlord's agent a list, alphabetically arranged, of all the raiyats and other occupants of land in the block which he has to measure. serial number of the fields held by him; and he will fill in columns 1 to 9 of each raiyat's khatian on the same day or as the Settlement Officer may direct. If, for example, fields Nos. 8, 9, 10 belonging to A B, the amin will write down the figures 8, 9, 10 opposite A B's name at the time of measurement, and in the evening of the same day, or as soon after as possible, he will fill up the other columns of A B's khatian.

6. As the khatian is written up day by day, so should all that is entered in it be explained, as far as practicable, day by day to the tenants and landlords concerned; in other words, what is called the "*tasdiq*" "*bujharat*" or attestation should proceed day by day with the measurement: so that, if anybody interested has any objection to any entry made relating to his fields, he should be able to have his objection cleared up before the amin leaves the village.

7. *Column 1.*—*Name of landlord.*—Should there be a large number of sharers, only the name of the principal landlord to whom rent is immediately payable need be entered, but a reference should be made to the entry in the khawat containing the names of all other landlords.

8. *Column 3.*—Will contain the names and descriptions of all the cultivators or sharers in the field as well as the name of mortgagees in cases where the fields are mortgaged.

9. *Column 4.*—Will show the names of under-raiyats with a reference to the number of the khatian on which the particulars of the under-raiyat's holding will be found.

Column 9.—Area in village bighas will, when the survey is conducted by a professional party, be filled up when necessary by the Survey Officers after receipt of notification of the length of the village laggi current in each mahal from the Settlement Officer.

Columns 10, 11, 12.—Amount of present rent according to zemindar, raiyat, and patwari will be filled in by the Settlement Officer when he visits the village in accordance with rule 25, post.

Columns 13, 14, 15, 16.—*Fair rent fixed, if any, class of holding, mode in which rent has been fixed, special incidents of the tenancy.*—These columns will be filled in by the Settlement Officers in accordance with the rules hereinafter prescribed for preparation of record of rents and rights.

Record of Rights.

10. The Record of Rights shall consist of and be contained in—

- I.—The khawat.
- II.—The khatian.

Rights of Proprietors.

11. The khewat shall contain a record of the character and extent of proprietary interests.

12. It shall be prepared in the following manner:—

(a)—An extract from the Collector's Registers A, B, C, D, framed under the Land Registration Act, VII (B.C.) of 1876, containing the names, extent, and character of the interests of proprietors of all revenue-paying and revenue-free lands comprised within the mouzah, shall be supplied by the Collector of the district to the revenue officer on the latter's application.

(b)—If the revenue officer finds that the proprietary interests existing in the village are in accordance with the entries regarding extent and character of proprietary interests as given in the Collector's registers, he shall have the entries copied into the khewat, which will form the record of proprietary and proprietary-mortgagees' interests for the purposes of the record of rights under the Tenancy Act. The extracts from the Collector's land revenue registers will also show the names and proprietary interests of managers and mortgagees of all revenue-free property within the village.

(c)—If any person claiming as proprietor or as assignee or mortgagee of an alleged proprietor deny the accuracy of the khewat as copied from the Collector's registers, the revenue officer shall refer him to the Collector of the district and shall also report the fact to the Collector in order that action may, if necessary, be taken under the Land Registration Act, to compel registration of the proprietor's name.

(d)—In any proceeding under chapter X, the revenue officer may, at his discretion, recognise as proprietor the person in possession of the land pending the registration of his name and under the Land Registration Act.

Board's instruction.

Under this rule a record of proprietary rights is to be prepared, which must in general be in accordance with the entries in the Collector's registers prepared under the Land Registration Act; but inasmuch as it is known that the Collectors' registers do not in many cases represent the existing facts, and inasmuch as if the Settlement Officer were to decline to recognise as proprietor every person whose name and interest have not been duly registered under the Land Registration Act, it is possible that his work might be brought to a standstill, hence discretion is allowed to the Settlement Officer under clause (d) to recognise a claimant of proprietary interests as proprietor, though his name may not have been registered. This discretion should only be exercised when there is practically no doubt that the claimant of proprietary right is really the proprietor. But though a non-registered proprietor may be thus recognised, such recognition will not dispense with the necessity for registration. All cases of such recognition of non-registered proprietors should be at once reported to the Collector, who should take immediate action to compel registration. The khewat or record of proprietary rights cannot be finally published till such registration has been completed, but the record of rights of tenure-holders, raiyats and under-raiyats may be published without awaiting such registration. The forms in the which records of proprietary rights are to be prepared are as follows:—

19.

Khewat (Part II) of Revenue-free lands showing lands occupied for public purposes.

1

Area of the land comprised in each entry.	Name of the department of Government or of public body by which the land is occupied.	The purpose for which the land is occupied.	Date and particulars of appropriation.	Number in mouzahwar register.	Reference to entries made in the intermediate register.
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Proprietor's private lands,—Nij-jole, Sir, Zerat or Khamar.

13. Only land which is proprietor's private land, as defined in section 120 of the Tenancy Act, will be entered as such. Land which, though cultivated by the proprietor, is not proprietor's private land within the meaning of the laws will be entered thus—"Cultivated by the proprietor, but not private land." Separate khatians will be prepared for such and for "Proprietor's private land."

Rights of Tenure-holders, Raiyats and Under-Raiyats.

14. The record of tenure-holders', raiyats' and under-raiyats' rights shall be prepared in the following manner:—

15. As soon as possible after the completion of the field measurements of each village, the following papers shall be made over to the revenue officer:—

- (1) The map.
- (2) The amin's khasra.
- (3) The khatian.

16. On receipt of these papers, the revenue officer shall issue a notification, which may be in the form given in schedule I attached to these rules, fixing a day, which shall not be less than one month from the date of issue of the notification, on which he will be present at some place to be specified, at or near the village, and after which applications for the settlement of fair rents will not be received. The notification shall further state that on the day so fixed, or on any other day to which the proceedings may be adjourned, the revenue officer will proceed to record rents when the circumstances are such as are specified in section 104 (1); or to settle fair and equitable rents on the application of either party; or on the revenue officer's own motion when the case falls under section 104 (2); and it shall require all parties interested in the subject matter of the enquiry to attend at the time and place specified, with such evidence as they have to offer in connexion with the proceedings. Such notice shall be forwarded to the sub-divisional officer and the munsiff within whose jurisdiction the land is situated to be affixed in their respective courts, and it shall also be published by proclamation and beat of drum and fixed up in the presence of not less than two persons in some conspicuous place in the village to which it refers.

Form of notice under this rule.

Notice to the proprietors, tenure-holders, landlords, raiyats, and under-raiyats of—

Village
Pergunnah
Thana
District

Take notice that under the powers vested in me by the Bengal Tenancy Act, VIII of 1885, and the rules made thereunder, I shall, on the _____ day of, 188 _____, proceed to record the rents of all tenants holding or cultivating lands in the above-named village; I shall also, at the said time and place, or at such other time to which the proceedings may be adjourned, proceed on the application previously made of either landlord or tenant to settle fair and equitable rents under section 104, sub-sections 2 and 3 of the said Act. Furthermore, notice is given that, should it then appear that any tenant is holding land in excess of or less than that for which he is paying rent, and should neither the landlord nor tenant apply to have a fair rent settled, I shall, in accordance with the said section of the Tenancy Act, proceed of my own motion to settle a fair and equitable rent for such tenant's holding.

Nq landlord or tenant shall be entitled to present an application for settlement of fair and equitable rents after the above-mentioned date. All applications should therefore be presented to me before the said date.

You are hereby required to attend before me at the abovementioned time and place, and at any other time and place to which the proceedings may be adjourned, and to produce such evidence written or oral, as you may have to offer on the subject-matter of the proceedings.

Revenue-Officer.

17. The revenue officer may also, if he deem fit, take such additional measures, under Rule 1 of this Chapter, as may be desirable to procure the attendance at the place specified in the notice to be issued under the last preceding rule of the under-riayats, raiyats, landlords, tenure-holders, and proprietors, or their authorised agents.

18. The record of rights of tenure-holders and under-tenure-holders shall be, as far as may be practicable, prepared in the same way as the record of raiyats' rights, or in such other manner, not being inconsistent with these rules, as the Board of Revenue may direct. The record of rights of under-raiyats shall be, as far as may be practicable, prepared in the same way as the record of raiyats' rights, or in such other manner, not inconsistent with these rules, as the Board of Revenue may direct.

Board's instruction under the preceding rule.

The record of the rights of tenure-holders and under-tenure-holders should be prepared in the same manner, and form, as the record of raiyats' rights, where the tenure is of a raiyati character, such as that of a head raiyat who, though a tenure-holder, cultivates part of his tenancy himself, and in the same manner and in similar form to the record of proprietary interests, where the tenure is of a proprietary character, such as that of a thikadar, ijaradar or other proprietary assignee.

20.

*Specimen Form of Record of Interest of Thikadur, Ijaradar or other Proprietary
Tenure-holder—see Rule 18, Chapter VI, Tenancy Act Rules, Board's Instructions.*

[illegible]

19. The record of raiyats' rights shall be prepared in the following manner.

20. On the date specified in the notice to be issued under Rule 16, or on any other date to which the proceedings may be adjourned, the entries which the amin has recorded in each tenant's khatian at the time of measurement shall be read out in presence of such of the interested parties as are in attendance. If the correctness of the entries recorded by the amin be disputed, the revenue officer shall settle the dispute by local enquiry or otherwise: provided that if the correctness of the measurement is called in question, and a fresh measurement demanded, the revenue officer may require the costs of the re-measurement to be deposited. If the re-measurement show the original measurement to have been inaccurate, the amount deposited shall be refunded to the objector.

Board's instruction.

It is of great importance that the parties should be made to thoroughly understand the entries made in the khatians against them, and that their objections should be patiently and carefully inquired into. In order that this may be the more thoroughly done, the Settlement Officer may depute a canongroo, or trustworthily subordinate of similar rank, to the village to explain the entries and note objections made to them before he visits the village himself and before he has the entries read out under this rule. One of the best safeguards for the accuracy of the work is the admission of the correctness of the entries affecting them by the parties interested. Without such assent all other tests are of comparatively little value.

21. The revenue officer shall ascertain what raiyats claim the right to hold at fixed rates, explaining as far as may be necessary, the provisions of the Act in this respect. If the right claimed is disputed by the landlord, the revenue officer shall call on the claimants for the proof of such right.

22. The revenue officer shall ascertain which of the raiyats are settled raiyats or occupancy raiyats, as the case may be, and shall record them as such in column 14 of the khatian.

23. The revenue officer shall ascertain what raiyats are non-occupancy, and to this end he shall be entitled to call upon the landlord or his agent to produce a statement showing the names of the raiyats alleged by him to be non-occupancy raiyats. On production of such statement, the revenue officer shall explain to the raiyats whose names are entered in the statement, and who have not already been recorded as occupancy or settled raiyats, the nature of the presumption raised by section 20 (7). If after such explanation a raiyat admits himself to be a non-occupancy raiyat, he shall be recorded as such. If he does not admit himself to be a non-occupancy raiyat, the revenue officer shall call on the landlord to prove the allegation made by him in regard to such raiyat.

24. Abwabs shall not be recorded with, nor entered as forming part of, the existing rent. Cesses which are authorized by law shall be recorded in column 12 (b).

25. The revenue officer on the day fixed by the notice issued under Rule 16 shall, as far as may be convenient, first proceed to record rents under section 140, clause 1. When neither the landlord nor the tenant has applied to have a fair and equitable rent fixed, and when it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, the revenue officer shall summarily ascertain the tenant's present rent, and record it in column 12 of the khatian, as the rent payable in respect of the land held by the tenant.

26. When all rents to which section 104, sub-section 1 is applicable, have been recorded, as far as may be convenient, the revenue officer shall proceed to settle rents under sub-sections 2 and 3 of the same section. In settling rents, the existing rent being presumed under section 104 (sub-section 3) to be fair till

the contrary is proved, if the landlord claims an enhancement, he will have to prove the grounds of and amount of enhancement; and if a raiyat claims a reduction, he will similarly have to prove the grounds of reduction. Provided that it shall be in the discretion of the revenue officer to admit an application made after the period fixed in Rule 16, if it be established to his satisfaction that the delay in making it was not due to any negligence or carelessness on the part of the applicant, and that, if it be not admitted, serious hardship or injustice would accrue to him. The order passed by the revenue officer on all such applications shall be final.

27. If within the period fixed and notified under Rule 16 the landlord applies for the settlement of a fair rent, he shall be considered as plaintiff and the tenant as defendant, and the proceeding shall be dealt with as a suit under this Act. If within the same period the tenant applies for the settlement of a fair rent, he shall be considered as plaintiff and the landlord as defendant, and the proceeding shall be dealt with as a suit under this Act.

28. If it appears that a tenant is holding land in excess of or less than that for which he is paying rent, and if within the period fixed and notified under Rule 16 of this chapter, neither landlord nor tenant applies for the settlement of a fair rent or if an application be not admitted under the proviso to Rule 26, the revenue officer shall, in accordance with the notice, proceed to fix a fair and equitable rent for the holding under section 104, sub-sections 2 and 3.

29. When a fair and equitable rent has been fixed under the last two preceding rules, it shall be entered in column 13 of the *khatians* as the rent payable in respect of the holding.

30. Where the estate or tenure belongs to or is managed by the Government or the Court of Wards, the procedure laid down in the preceding rules for recording or settling rents shall be followed, the Government or the manager of the estate or tenure respectively as the case may be, being regarded as the landlord.

Board's instruction.

Under this rule it will be observed that Settlement Officers in making settlement of rents in Government and Wards' estates are bound by the same rules and must follow the same procedure as in settling rents in private estates. Where then the Court of Wards claims an enhancement in the existing rent, a formal application for settlement of fair rents should be made by an officer duly authorised in that behalf by the Manager, and evidence should be recorded in the same way as if the estate were owned by private landlords. The Settlement Officer is in such cases bound to settle a fair rent judicially in the same way as in an estate in possession of a private zemindar with due regard to the provisions of the Tenancy Act. But if the estate belongs to Government, and a settlement of land revenue is being made, the Settlement Officer is bound of his own motion to settle a fair rent—vide section 104(2), and should himself call for and record any evidence that may be necessary to enable him to ascertain what would be a fair rent, having regard to the grounds of enhancement or reduction of existing rents given in the Tenancy Act for the determination of fair rents. In cases of this class the Settlement Officer should on behalf of Government appoint a peshkar or other officer of his Court as plaintiff *pro forma*, the raiyats being made defendants, and the proceedings should then be conducted as nearly as may be, as in a civil suit, except only that the Settlement Officer will himself call for and record such evidence as may be necessary in order to enable him to ascertain what would be a fair rent, and must not leave it to other parties to produce such evidence before him.

2. The Tenancy Act gives rules for the rent of occupancy raiyats and it is believed that these will be found clear and complete. The existing rent must, under section 104, be considered fair and equitable until the contrary is proved: the grounds on which it may be increased are stated in sections 30 and 52;

those on which a reduction can be claimed in 38 and 52. In the former case the settlement officer is not bound by the limit of 2 annas in the rupee specified in section 29 of the Act, but he is at liberty to enhance the rent up to any sum to which a Civil Court would enhance it in a regular suit. The provisions of the Act as to the assessment of rent must be observed

in all settlement proceedings, whether taken under Chapter X or under the Regulations. The work of ascertaining fair and equitable rates of rent is in its nature difficult, and too much care cannot be taken in its performance. Every mistake made must be permanently injurious either to the interests of the revenue or to those of the raiyat.

3. The Act does not give precise rules for the assessment of the rent of non-occupancy raiyats, but the provision of section 46 (9) should be observed, that in determining what is fair and equitable regard should be had to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village. It will seldom be expedient to introduce a difference between the rates of rent paid by occupancy and non-occupancy raiyats, respectively, where none at present exists.

4. In imposing assessments of lands being assessed and settled for the first time, such as alluvial accretion and the like, and in enhancement of rents on the ground of the existing rent being below prevailing rate paid for land of the same quality in the village, the most minute attention to local advantages and disadvantages is indispensable. It should always be borne in mind by the settlement officer that his business is not to determine the highest rate which the land may pay for one year, but what can be paid with regularity in average years. It is especially incumbent on him not to conclude too hastily that what appears to be an appropriate assessment is actually so. Fertility of soil is not the only circumstance which regulates the power of land to pay rent. Inferior land in an advantageous position will sometimes be found to be paying higher rent, i.e., to be deemed more valuable than better land less favourably situated; land in the middle of a plain, in every respect the same in quality as land on its edge, may be found paying double the rent of the latter, because less exposed to trespass from cattle; while it may also be, that land is held at a lower rate than other land apparently of the same quality in the village in consideration of services rendered by the tenant to the landlord, or to his predecessor, or in consideration of the tenant having undertaken to grow a special crop, such as indigo, for the landlord or his assignee, or of his having given up part of his holding to the landlord, or exchanged part of his holding for other lands of inferior quality. All these circumstances should be taken into consideration in assessing fair and equitable rents, so also land near a village may be found paying more than land of the same description at a distance from it. The demand for land or labour as effected by the denseness or otherwise of the population, the salubrity or insalubrity of the climate and the abundance or scarcity of good cultivable soil in the vicinity, must all be taken into account.

5. It is to be observed that it is the rent for the time being payable which is presumed to be correct and not the rate of rent. If, for example, the old area of the holding was supposed to be 5 bighas and the rate Rs. 2 per bigha, and the new area by survey turns out to be six bighas, the old rent of Rs. 10 and not Rs. 12 is presumed to be the fair rent till the contrary is proved. This can ordinarily be done by showing that the raiyat has taken up fresh land.

6. Settlement officers frequently report that they are unable to ascertain the existing rent even of land which has long been under cultivation. As under Act VIII of 1885, the rates at which rent is in fact paid in the village under settlement must in every case form the primary basis of the settlement, every effort should be made to find out what they are; and for this purpose the powers exercisable by a Civil Court of summoning witnesses and calling for accounts may properly be exercised. As the raiyats are interested in representing the actual rents to be low, there will frequently be a difficulty in ascertaining the truth; but this obstacle should not prove insuperable to officers accustomed to conduct judicial investigations. The difficulty of ascertaining existing rents must not be avoided by taking those of surrounding villages as a standard.

The rates prevailing in the vicinity afford no basis for enhancement under the present law. The road-cess papers may be examined with a view to ascertain the amount of the rents when they were filed, but it is to be remembered that these papers, though evidence against the landlord, are not evidence against the tenant who did not file them.

7. Where the land has been settled on a previous occasion, the rent rates then recorded may be presumed to be still in force if no evidence can be obtained to establish a subsequent change.

8. Without the special permission of the Government, the rent of any one raiyat, or of the holders of any one raiyati holding in a Government estate, during any one year of the currency of a settlement, shall not be raised above the sum which would be double of the rent previously paid on account of the holding. The most obvious reason for seeking such permission would be that it can be clearly shown by comparison of the result of present measurements with the records of a previous settlement or other papers that the area of lands actually held by the raiyat is more than double the area which he held when his rent was last adjusted.

9. Nor shall the revenue or rent demandable from a raiyat in a Government estate, or

from the holders of any one holding as above, in any one year in any case, exceed the revenue or rent payable by such raiyat in the preceding year by more than 20 per cent., so that when the total enhancement made at the settlement amounts to 100 per cent. on the rent previously paid, the maximum rent will in no case be demanded in less than five years. In ordinary cases, the period of progressive rise to a rent which is double the rent previously paid should extend to ten years.

10. The object of the rule regarding progressive increases is to prevent the hardship involved in a sudden increase of rent, and it is therefore just as applicable when the increase is owing to extension of cultivation on increased area, as when it arises from any other cause. The rule must be applied with proper discretion and due regard to the grounds on which it was promulgated. It will be observed that it applies only to raiyats and to cases in which the rent previously paid is ascertained, and in which the holding is the same, though the recorded area of the lands may be different; and from the nature of the case it will not be necessary to apply it to very petty holdings or very small rentals. It is difficult to lay down a hard-and-fast line; but it may be said generally that it need not be applied to cases in which the increased rent does not exceed Rs. 10.

11. In all settlement proceedings of Government estates reported for the confirmation of superior authority, it must be certified that the provisions in clauses 8, 9, and 10 have been adhered to in preparing the jamabandis of revised rent payable under the new settlement.

12. Where it has been the practice to let the land lie fallow to recruit, on account either of the natural poverty of the soil, or of its natural fertility having been impaired by constant cropping for a long series of years, provision should be made accordingly in the assessment on Government estates—that is, land lying fallow should be left unassessed. If a raiyat cultivates five bighas, one of which is always left fallow, then, if the rate for the land in cultivation is one rupee per bigha, he should be assessed Rs. 4 for his five bighas, or at the rate of 12 annas 9 pies per bigha.

13. The rapid extension of the growth of new and valuable staples of late years gives particular importance to the orders of the Court of Directors, dated the 12th April 1837. (See p. 388) Assessments should in Government estates invariably be fixed according to the value and capabilities of the land, and not according to produce.

14. Settlement officers making settlements of Government or Wards' Estates should endeavour to convert rents payable in kind into money rents under section 40 of the Tenancy Act, wherever this can be done with the free consent of the great majority of the raiyats. Commutations should not be made without such consent. Whenever commutations are effected, a careful record should be made of the obligations of the parties in the matter of *gilan-dazi*, or filed embankments constructed for purposes of irrigation.

15. When there are minerals, only the rents of mines existing at the time of settlement are to be treated as an asset.

16. The above instructions 8 to 15, for determining the rents of raiyats, are of course not applicable to raiyats in private estates whose rents will be settled strictly according to law, and even as regards raiyats of Government estates these instructions indicate restrictions on enhancement by which Government is willing to abide on its own estates, rather than bind the settlement officer's decisions, which must be regulated by the grounds of enhancement or reduction laid down in the Act.

17. Forms of progress reports of settlement work are given in forms Nos. 15 and 16, (see pp. 403-404).

31. With the consent of the Revenue Officer, any number of tenants, occupying land under the same landlord, in the same village or estate, may make a joint application for the settlement of rents, or may be joined as defendants in the same proceeding on a similar application by the landlord: Provided that if at any time it shall appear to the Revenue Officer that the question between any two of the parties of whom one is so joined with others cannot conveniently be so jointly tried, he may order a separate trial to be held of that question or he may pass such other order, in accordance with the Civil Procedure Code, for the joint or separate disposal of the application as he may think fit.

32. In proceedings under section 106, when a dispute arises before the final publication of the record regarding the correctness of an entry (not being an entry of rents settled under Chapter X) or as to the propriety of any omission, notice of the objection shall be served on all persons whose interests may, in the opinion of the Revenue Officer, be affected thereby, and they shall be called

upon to attend at such time and place as the revenue officer may fix for the disposal of the objection. If any person attends and contests the objection, the proceeding shall be dealt with as a suit between the parties under the Tenancy Act, in which the objector shall be plaintiff and the other parties defendants. If no person attends to contest the objection, the record may be amended accordingly, or the person who made the objection may, if the Revenue Officer thinks fit, be called upon to produce evidence in support of his objection, which may in that case be heard and decided as a suit *ex parte* under the Tenancy Act.

Publication of the Records of Rights.

33. When the record of rights has been prepared in the manner prescribed in rules 20 to 32, the Revenue Officer shall cause a draft of the *khowat* and *khatian*, or when more convenient, of each separately, to be posted, for the period of one month, at the landlord's village office, if there be one, and, if there be none, then in the presence of not less than two persons, on some conspicuous place in the village, and shall receive and consider any objections which may be made to any entry therein during this period.

34. When all applications for settling a fair rent have been disposed of, and all disputes of the nature mentioned in rule 32 have been decided, and all objections of the nature mentioned in rule 33 have been considered by the Revenue Officer, he shall note in the *khowat* and the appropriate columns of the *khatian* in regard to each entry what entries have been, and what entries have not been, the subject of dispute. He shall then finally frame the record and cause it to be published by having it posted in the village office at which the rent is usually paid, or in some conspicuous place in the village.

Supply of Copies of the Record of Rights to parties interested.

35. The Revenue Officer having completed the record shall cause copies of it to be made, one of which will be made over to the proprietor of the village, or, where there are more proprietors than one, to their common agent or common manager, as the case may be, one to the village patwari, if there be a patwari, one to the Collector or subdivisional officer.

A copy of the *khatian* relating to his tenancy shall be given to every tenant under the signature and seal of the Revenue Officer.

Final Reports.

36. The Local Government may, if it thinks fit, direct that a final report be written in English for each village and each local area under survey. The report for the village will show—

- (a)—The number of tenants of each class.
- (b)—The area and classification of the village lands according—(a) to survey and settlement; (b) to landlord's *jamabandi*, if known.
- (c)—The rental according to settlement, and according to landlord's *jamabandi* with explanation of increase or decrease, amount of Government revenue, and comparison of rent with revenue.
- (d)—The rates of rent prevailing, with history of past enhancements.
- (e)—Proximity to markets.
- (f)—Facilities for irrigation.
- (g)—Village customs, including customs as to payment of village officials.
- (h)—Arrangements made for maintenance of records.
- (i)—Other matters deserving of notice which have been excluded from the record of rights.

The report for the whole area under survey will contain the following particulars:—

I.—General description of the tract.

II.—Its fiscal history.

III.—Statistical results.

IV.—Comparison of condition of tract as regards rentals before and after survey.

V.—Financial results, including approximate division of expenses under the heads—

(a)—Survey.

(b)—Record of rights.

(c)—Preparation and distribution of records.

These reports shall not form part of the Record of Rights.

Board's instructions.

In the cases of large surveys and settlements whether of Government, Wards' or private estates, a full report and description of the tract under survey under each of the heads mentioned in the preceding rule should be submitted. In cases of petty settlements a short history of the settlement accompanied by tabular statements given in the appendix, forms Nos. 22(a) to 22(c), will suffice. These forms are as follows:—

Analysis of Revenue assessed. (Dhárjya Haat Rajswar Sárbhág.)

(1) Assets assumed as basis of settlement; (2) Deduct other expenses if any; (3) Remainder; (4) Deduct—(a) in the case of Government estates settled or farmed, 20 per cent. collection expenses, (b) in the case of resumed estates settled with the proprietors, 30 per cent. collection expenses and proprietary allowance, (c) in the case of estates farmed in consequence of refusal of proprietors to accept settlement, 20 per cent. collection expenses and farming profits, and (d) 10 per cent. malikana allowance to recusant proprietor; (5) Remainder or net revenue of Government; (6) Add malikana; (7) Total amount payable by settlement-holder.

22 (b).

Particulars of Service Lands. (Sirolipi Chákrán jamir Bises Bibaran.)

(1) Office of holders; (2) Area; (3) Remarks. Held by—(a) Putwaroes, (b) Mokuddams, (c) Ghatwals, (d) &c.

The information required for columns 1 to 6 should as far as possible be given in three lines, as follows:—

(1) According to earliest information available;* (2) according to last preceding measurement or regular settlement proceedings;† (3) According to present settlement proceedings.

22 (c).

Headings of Abstract of information relative to the assessment of

Estate _____ *Pergunnah* _____ *District*

_____ *Settlement made with* _____ *for* _____

years commencing from—

Pergunnah _____

_____ *Zillah* _____
_____ *Grámer jamábundi Samparkiya Sambáder*

Sár Sangraher (Khatianer) Sirolipi Sakal.

(1) Area reduced to standard bighas; (2) area in acres; (3) unassessed area, divided into—(a) forest, jungle, and waste, (b) site of village roads, tanks, and land otherwise, incapable of cultivation, (c) rent-free, (d) service, (e) total, columns (a) to (d); (4) assessed area, divided into—(a) cultivated and fallow, (b) cultivable, not cultivated (c) total; (5) land revenue; (6) mofussil rent-roll; (7) average of last five years, collections.

* Here specify date and source of information.

† Specify date and character of re-settlement.

101. (1) The Local Government may, in any case with the previous sanction of the Governor-General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made, and a record-of-rights be prepared, in respect of the lands in a local area by a Revenue-officer.

(2) The cases in which an order may be made under this section without the previous sanction of the Governor-General in Council are the following (namely):—

- (a) Where the landlord or a large proportion of the landlords or of the tenants applies for such an order, and deposits, or gives security for, such amount, for the payment of expenses, as the Local Government directs;
- (b) Where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;
- (c) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards; and
- (d) where a settlement of revenue is being made in respect of the local area.

3. A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

The Local Government cannot take action under this section independently, except in cases provided for in sub-section (2), and in those cases again it can take action *sui moto* only in a Government estate or estate under the management of the Court of Wards [clauses (b) and (c),] or in an estate not permanently settled (clause d). In the other case (clause a) the Government must be moved either by a body of tenants or by the landlord or body of landlords. Sub-section (3) causes a difficulty. Suppose the order is made without the previous sanction of the Governor-General, or suppose the conditions of clauses (a) to (d) do not exist, a notification in the official Gazette mends the whole affair, and is a conclusive evidence that the order has been *duly* made.

During the pendency of an order under this section no suit or application will lie in the Civil Court for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies. *Vide* section 111.

The following notifications have been published under this and the next section in the *Calcutta Gazette* of the 4th November, 1885, and of the 12th May, 1886.

"The 4th November 1885.—Under the powers conferred upon him by section 101 (1) of the Bengal Tenancy Act VIII of 1885, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to order that a survey shall be made, and a record-of-rights prepared, in respect of all lands included within the external boundaries of pergunnah Gudesswar and Tuppehs Chukla Nye and Butsaleh in the district of Mozufferpore.

"The particulars to be recorded in the survey and record-of-rights shall be the following :—

"The name of each proprietor, with the character and extent of his interest.

The situation, quantity, and boundaries of proprietors' private lands, as defined in Chapter XI of the Act.

"The name of each tenant.

"The class to which he belongs : that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure.

"The situation, quantity, and boundaries of the land held by him.

"The name of his landlord.

"The rent payable.

"The mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise.

"If the rent is a gradually increasing rent, the time at which, and the steps by which, it increases.

"The special conditions, and incidents, if any, of the tenancy."

The 6th of May, 1886.—Under the powers conferred upon him by section 101 of the Bengal Tenancy Act VIII of 1885, the Lieutenant-Governor has been pleased to order that a survey shall be made, and a record-of-rights prepared, in respect of all lands included within the boundaries of the Government estate of Chur Nulchera, in the district of Noakhally.

"The particulars to be recorded in the survey and record-of-rights shall be the following :—

"The name of each proprietor, with the character and extent of the interest.

"The situation, quantity, and boundaries of proprietors' private lands, as defined in Chapter XI of the Act.

"The name of each tenant.

"The class to which he belongs : that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure.

"The situation, quantity, and boundaries of the land held by him.

"The name of his landlord.

"The rent payable.

"The mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise.

"If the rent is a gradually increasing rent, the time at which, and the steps by which, it increases.

"The special conditions and incidents, if any, of the tenancy."

Other notifications have also followed these with respect to other estates.

For rules under this chapter, see pp. 353—400 401—420.

102. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely:—

- (a) the name of each tenant;
- (b) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;
- (c) the situation, quantity and boundaries of the land held by him;
- (d) the name of his landlord;
- (e) the rent payable;
- (f) the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise;
- (g) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;
- (h) the special conditions and incidents, if any, of the tenancy.

Without or in addition to other particulars.—Such particulars must be either material for the purpose of or must partake of the nature of the particulars specified in the section, and it is not open to the Government to order an enquiry or entry of any particulars which are quite beyond the scope of the details mentioned in section 102. Again, if we read this section with 103, it is clear that whatever may be the order of the Government, the Revenue-officer deputed can ascertain and record only the particulars specified in the last foregoing section, and a particular which does not fall within clauses (a) to (h), though it may be the subject of the Government order, is not a particular specified in the section. The words “subject to and in accordance with the rules, &c.,” do not confer upon the Government any power to extend the scope of the section.

The preamble of Regulation VII of 1822, which had a similar object in view, recited: “Whereas a moderate assessment being equally conducive to the true interests of Government and to the well-being of its subjects, it is the wish and intention of Government that in revising the existing settlement the efforts of the revenue-officers should chiefly be directed not to any general and extensive enhancement of the *jumma*, but to the objects of equalising the public burthens, and of ascertaining, settling and recording the rights, interests, privileges, and properties of all persons and classes owning, occupying, managing, or cultivating the land, or gathering or disposing of its produce, or collecting or appropriating rent or revenue payable on account of land, or the produce of land or paying or receiving any cesses, contributions or perquisites to or from any person resident in, or owning, occupying or holding parcel of any village or mehal.” And section 9

enacted : " It shall be the duty of Collectors and other officers exercising the powers of Collectors, on the occasion of making or revising settlements of the land revenue, to unite with the adjustment of the assessment and the investigation of the extent and produce of the lands, the object of ascertaining and recording the fullest possible information in regard to landed tenures, the rights, interests, and privileges of the various classes of the agricultural community ;" and that for this purpose their proceedings should embrace, the formation of as accurate a record as possible of all local usages connected with landed tenures, as full as practicable a specification of all persons enjoying the possession and property of the soil or vested with any heritable or transferable interest in the land or the rents of it, care being taken to distinguish the different modes of possession and property, and the real nature and extent of the interests held, more specially where several persons held interests in the same subject-matter of different kinds or degrees." Regulation VII of 1822 was repealed, so far as relates to the North-Western Provinces, by Act XIX of 1873, which consolidated the Revenue Law relating to those Provinces. Section 62 and the following sections of this Act contain the existing provisions as to the formation of the *Record of Rights*.

Rent payable.—The rent payable is the existing rent.

103. On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder.

This section replaces section 10 of Act VI B. C. of 1862 and section 38 of Act VIII B. C. of 1869.

This section will be very useful, as pointed out in Council, to a new landlord who cannot ascertain the tenancies and rents in his estate or tenure. But any landlord may apply under this section, who desires to have a record of his tenants' rights and rents. A proprietor of an estate, however, who has not his name registered under Act VII B. C. of 1876, cannot apply under this section (Local Government Rules, No. 39, *infra*).

"The rules framed by the Local Government under this section are as follows:—

Applications by proprietors for Survey and Record of Rights.

37.* Section 103.—Applications under this section shall be made to the Collector of the district.

"38. The application shall specify—

- (a) The status of the applicant, *viz.*, whether he is a proprietor or a tenure-holder, and the particulars in respect of which the application is made.
- (b) The number of tenants (so far as the applicant is able to state it) occupying the estate or tenure, or part thereof in respect of which the application is made, the total rent payable by them at the time, and the estimated area covered by the application.

"39. If the application is made by a proprietor, it shall not be admitted

* This number and the following are in continuation of Rules printed at pp. 419-420 *ante*.

unless the name of the applicant and the extent of his interest are registered under Act VII B. C. of 1876.

"40. On receipt of the application, the Collector shall forward it to the Commissioner with any remarks which he may think necessary.

"41. The Commissioner may call for further information, or may require the application to be amended.

"42. If the Commissioner shall have reason to believe that the number of tenants affected by the application does not exceed 1,000; and that the rent payable by them at the time the application is made does not exceed Rs. 25,000, he shall pass an order allowing or rejecting the application; but otherwise he shall forward the application with an expression of his opinion for the orders of the Board of Revenue.

"43. A Commissioner rejecting an application shall record his reasons for doing so, and the applicant, if dissatisfied with the order, may appeal within one month to the Board of Revenue.

"44. When an application is referred to the Board under Rule 42, or in consequence of an appeal under Rule 43, the Board shall pass such orders as it may think fit for allowing or rejecting the application.

"45. The Commissioner or the Board, as the case may be, when allowing an application, shall specify the Revenue-officer or officers by whom the record is to be prepared.

"46. As soon as an application is allowed, the Collector shall call upon the applicant to deposit the expenses at the rate of eight annas per acre for the estimated area in respect of which the application has been allowed. If the Collector is unable to estimate the area, he shall calculate the expenses at the rate of Rs. 2 per each tenant. If the amount does not exceed Rs. 500, the applicant must deposit the whole amount in advance. If it exceeds Rs. 500, the applicant shall deposit the sum of Rs. 500, and shall give such security as the Collector may require for the balance. The applicant shall, when called upon, from time to time, deposit such further sum as may be necessary for carrying on the operations. On completion of the proceedings, any unexpended balance shall be refunded to the applicant.

"47. In conducting the operations, the Revenue-officer shall proceed in accordance with the rules for the guidance of officers acting under orders made under section 101."

Ascertain and record the particulars:—This is known in the North Western Provinces as *vajibulwaz* or village record. The revenue officer is bound to record in the jumabundi the existing right of the cultivators and cannot impose an increased rent; or assess rent at fair and equitable rates.—*Ledlie v. Durgaburni*, 21 W. R., 410; *Sharoda Persad v. Raj Mohan*, 18 W. R., compare 22 W. R., 480, 24 W. R., 272; 25 W. R., 136; 20 W. R., 207. He can however settle rent at fair and equitable rate under section 104.

104. (1) When, in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

(2) When it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent, or either the

landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (2), clause (d), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

(3) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

This is new.

The Revenue-officer is to record the existing rent except (1) where the landlord or tenant applies for a settlement of rent, (2) when the tenant is holding land in excess of orders than that for which he is paying rent, (3) when a settlement of revenue is being made for the local area under section 107, sub-section (c) clause (d).

Excess area:—Revenue-officers in determining what is excess area should have regard to section 52 (2).

Rules laid down in this Act.—See as to enhancement sections 6, 7, 8, 30, 31, 32, 33, 34, 35, 36 and 46; as to reduction, section 38; and as to alteration of rent for alteration of area, sections 50, 52.

105. (1) When the Revenue-officer has completed a record

Publication of Record. made under this chapter, he shall cause a draft

thereof to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

(2) After the expiration of this period the Revenue-officer shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this chapter.

"Locally published" ought to mean *not only published in the local Gazette but in the local papers, in the District or even in the Sub-division or locality.* For the meaning of the word "prescribed," read clause (15) of section 3.

"This period" in sub-section (2) means the prescribed period. *"An shall cause"* means *shall finally cause.* The publication in sub-section (2) means *final publication.* Final publication is conclusive evidence that the record has been duly made, but the section does not say that it is conclusive evidence of the correctness of the entry. Of course read with section 106, it would appear that the officer shall have to determine its correctness before final publication, but would be straining the word *duly* to mean *correctly.*

See Government rules 33 and 34 at p. 419. The period prescribed under sub-section (1) is one month.

106. If at any time before the final publication of the record

Procedure in case of dispute as to entries in record. under the last foregoing section a dispute arises as to the correctness of any entry (n

being an entry of a rent settled under this chapter), or as to the propriety of any omission, which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

Is the decision of the Revenue-officer final in the sense of not being open to a regular suit in the Civil Courts? The fact that two appeals have been prescribed from his decision (section 108) seems to show that his decision is meant to be final, because if a regular suit would lie it would seem that a Munsiff could in a regular suit set aside the decision under section 108 of a Special Judge or even of the High Court. Such a contention would be absurd, and possibly the *ratio decidendi* of *Nilmoni Sing Deo v. Ram Bindhu Roy and others*, 1. L. R., 4 Cal., 757 and 7 Cal., 388, will apply. Section 111, however, while precluding the Civil Court to take cognizance of any suit for the alteration of the rent or determination of the status of any tenant during the preparation of the record, implies that after the preparation of the record such a suit is maintainable. *Until the final publication of the record*, the Civil Court shall not entertain a suit of this nature. Then it follows that *after* the final publication of the record, the Civil Court can entertain such a suit. An undisputed entry is only a presumptive evidence. It is rebuttable by a suit; but the effect of an entry after contest is not provided for. Again, section 109 read with section 105 clearly shows that the record is not conclusive evidence of its correctness; for if it were so, the undisputed entry would not have been rebuttable. Reading therefore section 106 with sections 105 and 109 and 111, it would appear that a regular suit impeaching the correctness of such a record will lie. It has however been held that the Civil Courts are not competent under Act XIX of 1873, section 241, to try suits to alter or amend a record-of-rights, or to give directions in respect of the same; but they are not debarred from entertaining and determining questions of right merely because such questions may have been the subject of entries in the record-of-rights, and because such determination may show that such entries are wrong and need correction. Consequently, a claim in the Civil Court for a declaration of the right to make certain collections of rent and to defray therewith certain village expenses, though such right had been the subject of entry in the record-of-rights adverse to the person claiming such right, was held to be maintainable—1. L. R., 1 All., 613. See 21 W. R., 410; 22 W. R., 540.

See Local Government Rule 32 at p. 418.

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

For rules see pp. 401—419.

108. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under this chapter.

Appeals from decisions of Revenue-officers.

(2) An appeal shall lie to the Special Judge from the decision of a Revenue officer under this chapter, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 106 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter :

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained or settled under section 104.

Sub-section (1).—The District Judge of Mozufferpore has been appointed to be the Special Judge for the purpose of hearing appeals from the decisions of the Revenue-officers employed in conducting the survey and record of rights in *perganá* Guddeswar and in *Tuppels Chukla Nyo* and *Butsaleh* in the district of Mozufferpore.

Sub-section (2).—An appeal lies only from a *decision* of the Revenue-officer ; so that where there has been no decision but only an unobjected *record*, there can be no appeal. All proceedings to settle rents (sec. 107) and all orders in objections under section 106, are decisions.

Sub-section (3).—Chapter XLII of Civil Procedure Code provides that second appeal shall lie to the High Court on the following grounds, namely, (1) the decision appealed against being contrary to some specified law or usage having the force of law ; (2) the decision having failed to determine some material issue of law or usage having the force of law ; and (3) there being a substantial error or defect in the procedure, as prescribed by that code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits (sec. 584) : and that no second appeal shall lie except on the above grounds (sec. 585).

109. (1) Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

*Undisputed entries in record to be presumptive evidence.

(2) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

This section should be read with sections 105 and 106. Section 105 provides for the final publication of the record, and section 106 provides rules for the determination of disputes as to the entry before the final publication. Hence when the final publication will be made, the dispute, if there be any, would have been heard and determined before the final publication. Section 106 says "*shall hear and decide the dispute*." It is imperative ; a decided dispute is not a disputed entry, and the chapter confers no power upon the Revenue-officer to keep any

dispute open. A *disputed entry* in this section therefore means an entry made after contest or after deciding a dispute, and an *undisputed entry* means an *uncontested entry*. Mark however the phraseology. The words "disputed entry" and "undisputed entry" imply that the entries of the record are not treated by the Legislature as past dispute or final, but that they are open to a regular suit.

Undisputed entry is presumed to be correct, but no provision is made for disputed entry.

Vide notes of section 106.

Compare also I. L. R., 2 All., 460, 493, 394; I. L. R., 5 Cal., 744; L. R., 7 I. A., 63; 3 P. C. R., 704; I. L. R., 1 All., 563, 567; I. L. R., 2 All., 876 (F. B.); I. L. R., 2 All., 631; I. L. R., 1 All., 688; L. R., 5 I. A., 87; 3 P. C. R., 529; 25 W. R., 121.

110. When any rent is settled under this chapter, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

Time at which settlement of rent is to take effect.

111. When an order has been made under section 101,—
Stay of proceedings in Civil Court during preparation of record. (a) a Civil Court shall not, until the final publication of the record, entertain a

suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies; and

(b) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a Civil Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

Until the final publication of the record.—The Civil Court can then entertain a suit contemplated by this section, after the final publication of the record.

Vide notes of section 106.

Alteration of rent.—This includes enhancement and reduction of rent as well as alteration of rent.

Determination of the status.—See section 157.

112. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue-officer acting under this chapter with the following powers or either of them, namely:—

Power to authorise a special settlement in special cases.

(a) power to settle all rents;

(b) power, when settling rents, to reduce rents if in the opinion of the officer the maintenance of existing rents

would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

(3) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor-General in Council.

The Select Committee observed:—"Under the special settlement which will only be undertaken with the previous sanction of the Government of India, and which is meant to be applied only in circumstances in which the operation of the ordinary law is likely to prove insufficient, the Settlement-officer will have power to settle all rents, and will, moreover, have power to reduce rents on other grounds than those ordinarily applicable. We think that in the exceptional cases in which it may be necessary to have recourse to this procedure, the Government should have power to go to the root of the matter and to put its settlement on a thoroughly stable basis.

113. When the rent of a tenure or holding is settled under this chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding for fifteen years, and, in the case of a non-occupancy-holding, if the rent is settled in any case under section 112 or on the application of the landlord under section 104, for five years. The periods of fifteen and five years shall be counted from the date of the final publication of the record.

Compare sections 9, 37, 29 and 46.

114. Where an order is made under this chapter in any case except under section 101, sub-section (2), clause (d), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any persons shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

The money shall be recovered under the Certificate Procedure Act VII of 1868 and 1880 B.C.

115. When the particulars mentioned in section 102, clause (b), have been recorded under this Chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

Presumption as to fixity of rent not to apply where record has been prepared.

CHAPTER XI.

RECORD OF PROPRIETOR'S PRIVATE LANDS.

"In dealing with the difficult question of *khamar* or *zeraat* land, we have provided two alternative methods of procedure: (a) that of survey and registration of such land by a Revenue-officer, by order of the Local Government; (b) that of enquiry on the application of the individual landlord or tenant concerned. The former procedure would apply to large areas where the question is important, the latter to disputes about particular plots of land. At the request of the Government of Bengal the two methods of procedure have been left equally applicable to any part of the country. We have made no distinction in the description of this land between Bengal and Behar, but we have directed regard to be had in every case to local custom, and, while making it incumbent on the Revenue-officer to record certain lands as the proprietor's private land, have endeavoured to assist him by certain guiding rules in cases not clearly coming under these heads." (*Select Committee on B. T. Bill No. III.*)

"The only amendment calling for notice in this chapter is the insertion of a provision in section 116, that nothing in the Chapter (VI) relating to non-occupancy-*rai-yats* shall apply to a proprietor's private lands. This merely expresses what was always intended, though by an oversight it was not previously provided for." (*Select Committee on B. T. Bill No. III.*)

"I cannot see why any attempt should be made to contract the sight of landlords to the lands of that description (*khamar* lands), or to leave the determination of those rights to the executive authorities instead of to the Courts of law." (*Sir R. Garth's Minute.*)

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to a proprietor's private lands known in Bengal as *khamar*, *nij* or *nij-jote*, and in Behar as *zeraat*, *nij*, *seer* or *kamat*, where any such land is held under a lease for a term of years or under a lease from year to year.

Saving as to *khamar* land.

The whole force of the section lies upon the word *where*. Not that Chapters V and VI do not apply to *khamar* lands at all, but they do not apply *where* it is held under a lease for a term of years or under a lease from year to year.

The old law was to the same effect. Section 6 of Act VIII of 1869 (B. C.), and of Act X of 1859, having defined an occupancy *rai-yat* or the conditions of an occupancy right, says: "But this rule does not apply to *khamar*, *nij-jote* or *seer* land belonging to the proprietor of the estate or tenure and let by him on lease for a term, or year by year." Accordingly it has been held that the fact of the land being *nij jote* does not *per se* prevent a cultivator from acquiring rights of occupancy in it. This section excludes only *khamar*, *nij-jote*, and *seer* lands from the operation of such rights,

Old law.

only when such lands have been let by the proprietor on a lease for a term of years or year by year—*Gourhari Singh v. Behari Raoot*, 12 W. R., 278. It is only when *khamar* lands are let by the zemindar for a term of years, or from year to year, that the tenant does not acquire a right of occupancy, though he be in continuous possession for 12 years—*Bhagwan Bhagat v. Jagmohin Roy* 20 W. R., 308; *Shaik Ashruff v. Ram Kishore Ghose*, 23 W. R., 288. The right to hold *nij-jote* lands passes with the sale to the auction-purchaser, and the zemindar cannot claim any right of occupancy in those lands: his holding after the sale is in the capacity of an ordinary raiyat and must be dealt with accordingly—*Joy Dutt Jha v. Bajee Ram Singh*, 7 W. R., 40. A zemindar occupying his own lands as *nij-jote* cannot, when the zemindari passes into other hands, lay claim to them on the ground that he is a raiyat with the rights of occupancy—*Reed v. Sree Kishen Sing*, 15 W. R., 430.

A landlord seeking to obtain an enhanced rate of rent on account of *nij-jote* held by a tenant without a right of occupancy has no right to obtain a judicial assessment. He can serve his tenant with notice to quit unless he agrees to pay the rent required, and if the tenant continues in occupation, he must be taken by implication to pay the enhanced rent—*Janu Munder v. Brijoo Singh*, 22 W. R., 548.

This Chapter does not make any such provision that unless the land is recorded as the proprietor's private land under section 120, it is not so. The presumption will of course be that it is not *private land* (sub-section (2) of section 120), but the zemindar may prove it to be so. If the Local Government do not direct a survey under section 117, or neither party applies to the Revenue-officer for it, the zemindar can prove a land to be his private land. When however a survey or record is made, under section 119, the record will be of the same effect as the record of Chapter X.

Proprietor and not a tenure holder:—The section again contemplates a proprietor's (cl. 2 of section 3) private land; a patnidar or a tenure-holder will have therefore no private land whatever. And Mr. Justice Field says in his *Mimute*: "I am afraid the provisions of this section will be used by raiyats to harass their landlords. I may observe that the Bill speaks only of a proprietor's private lands, but where the zemindar has virtually become an annuitant, and the real proprietary interest has passed to a tenure-holder, as in the case of *patni* tenures, the *khamar* land belongs to the tenure-holder."

A tenant of a *khamar* land will have possibly all the advantages of the Act, because Chapter XI is a part of the Act, and the general provisions will apply to him. Consider the effect of sections 89 and 82 upon his status.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last-foregoing section.

Power for Government to order survey and record of proprietor's private lands.

Vide the Report of the Select Committee quoted at the head of this Chapter.

Under the powers vested in it by section 189, *post*, the Local Government has conferred on Revenue-officers when directed to make a survey and record of proprietors' private lands, all powers exercised by the Civil Court in the trial of suits and the power to enter upon any land, and to survey, demarcate, and make a map of the same and any power exercisable by any officer under the Bengal Survey Act, 1875. (*See Rule 1 at p. 401 and notifications at p. 422.*)

The Local Government has, however, not yet directed any survey and record of proprietors' private lands in any local area. When the Local Government directs any such survey and record, the Revenue-officer appointed to make the survey and the record, shall be guided by the rules printed under section 101, so far as they may be applicable.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Power for Revenue-officer to record private land on application of proprietor or tenant.

Vide the Report of the Select Committee quoted at the head of this Chapter and the Appendix.

The Local Government has framed the following rules under this section:—

"1. Applications under this section may be made to the Collector of the district, or to the officer in charge of the subdivision in which the land in question is situated, or to any Assistant or Deputy Collector especially empowered by Government to receive such applications. If the application is made to the Collector of the district, he may transfer it for disposal to any officer empowered by Government to receive it.

"2. The application shall be signed by the party making it, and shall contain the following particulars so far as the applicant is able to furnish them:—

- (a) The name, towji number, and Government revenue of the estate.
- (b) The names of the registered proprietors, and the share held by each.
- (c) The specification of each plot of land referred to in the application, showing the village in which it is situated and the area and boundaries of each plot, if known.
- (d) The names of the tenants (if any) in occupation of each such plot.
- (e) Grounds of the application.

"3. On receipt of the application the officer shall make such inquiry as he may think fit by examining the applicant or his agent, and may call for further particulars before ordering further proceedings.

"4. If the area of lands is already ascertained by measurement made by competent agency under the authority of Government, or if for sufficient reason a further measurement is considered desirable, the officer shall order the lands to be measured and shall estimate the cost of measurement in accordance with the rules for the time being in force for the measurement of lands in partition cases, and shall require the applicant to deposit the amount either at once or in such instalments as he may deem fit."

119. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 105 to 109, both inclusive, shall apply.

Procedure for recording private land.

Vide notes under sections 105 to 109.

120. (1) The Revenue-officer shall record as a proprietor's private land—

Rules for determination of proprietor's private land.

- (a) land which is proved to have been cultivated as khamar, zeraat, seer, nij, nij-jote or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and
- (b) cultivated land which is recognized by village usage as proprietor's khamar, zeraat, seer, nij, nij-jote or kamat.
- (2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.
- (3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

The presumption on sub-section (2) follows the presumption in sub-section (7) of section 20, and is in accordance with the spirit of the Legislature.

CHAPTER XII.

DISTRAINT.

The operation of this Chapter is kept in abeyance by Act XX of 1885 till February 1886. Till the first day of February 1886, the provisions of the old Act shall be in force so far as they relate to distraint. *Vide the Appendix.*

The Rent Commission proposed to abolish the law of distraint. They remarked:—"This is an offset of English law originally introduced into this country by Regulation XVII of 1793, which empowered certain specified landlords to distraint and sell the crops and products of the earth of every description, the grain, cattle, and all other personal property (whether found in the house or on the premises of the defaulter or of any other person) belonging to their tenants. This continued to be the law until 1859, when the power of distraint was limited to the produce of the land on account of which the rent is due. There can be little doubt that this change considerably impaired the coercive efficacy of this procedure as a means of recovering rent; and we are afraid that the provisions of the present law are not always strictly attended to. There is evidence of positive abuse of these provisions in Behar; and the experience of some of us is, that they have not always been used in a regular manner in other parts of the country.

The present chapter is a compromise of that proposal made by the Bengal Government in consideration of the opposition made by the landlords.

This chapter should be read with section 186.

121. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,—

Cases in which an application for distraint may be made.

- (a) any crops or other products of the earth standing or ungathered on the holding ;
- (b) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead :

Provided that an application shall not be made under this section—

- (1) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act ; or
- (2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed ; or
- (3) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

Old Act :—*Act VIII of 1869, B.C., s. 68. Act X, 1859, s. 112.*—The produce of the land is held to be hypothecated for the rent payable in respect thereof ; and when an arrear of rent, as defined in section 20 of this Act, is due from any cultivator of land, the zemindar, lakherajdar, farmer, dependent talukdar, under-farmer, or other person entitled to receive rent immediately from such cultivator, instead of bringing suit for the arrear as hereinbefore provided, may recover the same by distraint and sale of the produce of the

Produce of the land to be held hypothecated for the rent.

Arrears of rent may be recovered by distraint under the following rules.

Cultivators who have given security to be exempt from distraint. land on account of which the arrear is due, under the following rules. Provided always that, when a cultivator has given security for the payment of his rent, the

produce of the land for the rent of which security has been given, shall not be liable to distraint. Provided also that no sharer in a joint estate, dependent taluk, or other tenure, in which

Proviso. a division of lands has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager

Proviso. authorized to collect the rents of the whole estate, taluk, or tenure, on behalf of the sharers in the same. (Provided further that, in pattidari estates situated in districts under the Government of the Lieutenant-Governor of the North-Western Provinces, distraint shall be made only through a lumberdar.)

Act VIII, 1869, B.C. s. 69. Act X, 1859, s. 113.—Distraint shall not be made for any arrear which has been due for a longer period than one year; nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator.

Act VIII, 1869 B.C., s. 71. Act X, 1859, s. 115.—Standing crops, and other ungathered products of the earth, and crops or other products, when reaped or gathered, and deposited in any threshing-floor, or place for treading out grain, or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act. But no such crops or products, other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce, after it has been stored by the cultivator, and no other property whatsoever shall be liable to distraint under this Act.

The landlord may present an application, &c.—Is the gomashtha entitled to make an application under this section? *Vide* section 187 of this Act and also section 70 of the old Act. "Gomashtas employed in the collection of rent are not permitted to distrain, unless expressly 'authorized by power-of-attorney on that behalf.' To distrain for rent is not within the general scope of a gomashtha's authority, and the landlord would not therefore be liable for the acts of a gomashtha, who had not been expressly authorized by him to distrain." (*Bell in his Landlord and Tenants' Act*). Where, however, a landlord did actually order the gomashtha to make the distress, he would be liable for the illegal distress, although it was not made under a written authority. So if the gomashtha paid to the landlord the proceeds of the distress, and the landlord received such proceeds, knowing that they had been obtained by distress, he would, by thus accepting and ratifying the act of the gomashtha, render himself as responsible for the act of the gomashtha, as if he had expressly authorized the illegal act—(*Ram Joy Mundle v. Kally Mohan Roy Chowdry, Marsh., 282; Samasundari Debia v. Mallyat Mundle, 11 W. R., 101*). Under the present law, however, there being no private distraint, it is presumed, a gomashtha may as well make an application and verify it—Compare s. 187, *post*. A landlord cannot distrain crops for arrears due, not from the tenant, but from another person not in possession and who did not cultivate the crops—(*Mohinee Dassee v. Ram Kumar Kurmokar, Sp. W. R., Act X, 77*). With regard to what crops are subject to distress it is said as follows: "We have considered the sections of Act X of 1859 by virtue of which the right of distress is now exercised in these provinces, and having

regard to the whole of those sections, we are of opinion that the term 'produce of land' is to be construed as equivalent to that which can be gathered and stored, crops of the nature of cereal, or grass or fruit crops, and it does not apply to the trees from which the crops, if fruit crops, are gathered. The law of distress in Act X of 1859 is substantially a re-enactment of the law of distress provided by Regulations XVII of 1793, XXXV and XLV of 1795, and that again has evidently been adopted from the English Statute Law. Now by Statute Geo. 2, c. 19, s. 8, landlords are empowered to distrain corn, grass or other product growing upon any part of the land demised, and it has been held that the term product in the section above quoted applies to such products only as are similar to those specified, to all of which the process of becoming ripe, and of being cut, gathered, made, and laid up when ripe, is incidental. Hence trees, shrubs, and plants growing in a nursery ground, cannot be distrained for rent—Selwyn's N. P., p. 669. The provisions of Act X appear to us also to refer only to such produce of the land as becomes ripe and is cut, gathered and stored"—(*Shoo Pershad Tewary v. Musst. Mohema Beebee*, 1 All., 76).

"Proprietor," as defined in Act VII of 1876 (B.C.) means "every person being in possession of an estate or revenue-free property, or of any interest in an estate or revenue-free property as owner thereof; and includes every farmer and lessee who holds an estate or revenue-free property directly from or under the Collector."

Written Contract :—See sections 9 and 43 and 48 *ante*.

Sublease :—Under the old law it was held that when the tenant had sublet the land, the crops of the sub-tenant were subject to distraint for rent due from the tenant—(*Goolun Sing v. Baldeo Kahar*, 4 All. Rep. 76).

122. (1) Every application under the last foregoing section shall specify—

Form of application.

- (a) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;
- (b) the name of the tenant;
- (c) the period in respect of which the arrear is claimed;
- (d) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable;
- (e) the nature and approximate value of the produce to be distrained;
- (f) the place where it is to be found, or such other particulars as may suffice for its identification; and
- (g) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(2) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of complaints.

Name of the tenant:—If the land be in the possession of a person other than the tenant named under clause (b) and not claiming through the latter but against him, the landlord has no right of distraint (*Mohini Dasi v. Ram Kumar*, Sp. W. R., Act X, 77).

Verification:—Section 51.—“The plaint shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case: Provided that, if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.”

Section 52.—“The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true. The verification shall be signed by the person making it.”

Stamp.—The Court-fee stamp on an application for distraint will be of 8 annas under Schedule II, art. 1, cl. (b), para. 2 of the Court Fees' Act, VII of 1870.

123. (1) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(2) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3) Where a Court cannot forthwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

The High Court has laid down the following rules under this Act:

- (5) All applications to distrain shall be presented and heard in open Court. The examination mentioned in section 123, sub-section (2) shall be on oath or affirmation.
- (6) All such applications and all notices of distraint under section 141 shall be entered in a register to be called the “Distraint Register,” which shall be kept in the form annexed. A copy of every such application, to be furnished by the applicant, shall be given to the officer appointed to make the distraint, and a copy of the notice under

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to Execution of order for distraint. distraint the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distraint the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court :

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

Old Act:—*Act VIII. of 1869, B.C., s. 74. Act X, 1859, s. 118.*—Standing crops, and other ungathered products, may, notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries, or other places, as are commonly used by him for the purpose. If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and, in such case, shall store the same either in such granaries, or other places, as aforesaid, or in some other convenient place in the neighbourhood. In either case, the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose. Crops or products which, from their nature, do not admit of being stored, may be sold before they are cut or gathered, under the rules hereinafter provided; but in such case, the distraint shall be made at least twenty days before the time when the crops or products, or any part of the same, would be fit for cutting or gathering.

Under Rule 6, p. 433 *ante*, the officer appointed shall be furnished with a copy of the application.

The High Court has made the following rules under this section:—

- (7.) The officer deputed to make a distraint under section 124, or to take charge of produce distrained under section 141, must in all cases be able to read and write the language of the district.
- (8.) The written demand under section 125 shall be framed in accordance with the entries contained in the application or notice referred to in Rule 2.
- (9.) The notification of distraint directed in section 124, Act VIII of 1885, shall be published,—

By fixing up in a conspicuous part of the holding or other place in which the produce is, a notice that such produce has been distrained, and by proclaiming at the same time the contents of the notice by beat of drum.

- (10.) The notice shall specify the name of the person at whose instance the distraint is made, the name of the defaulter, the name of the person in whose charge the produce has been placed, and the amount of the arrear due; and it shall direct any person intending to reap, gather, or store the crop or produce, if unreaped or ungathered, or intending to do any other act, necessary for its preservation, to give

due notice of his intention to the person who has been placed in charge.

(11.) The notice shall be fixed up in the presence of not less than two persons, in addition to the agent of the distrainer, who points out the crop or produce.

(17.) All officers deputed to distrain property under this chapter shall, if there is a post office in the vicinity, report to the Court by letter immediately the distraint is made, or if there is no such post office, shall, immediately on his return, report in writing the nature and extent of the crop or produce distrained, the day on which the distraint was made, the name of the person, (if any) placed in charge of the crop, and the day fixed for the sale, or if the sale has taken place, the day on which it took place. He shall also, immediately on his return, file an account of all money received and disbursed by him, together with the receipts for the same and the record of the biddings at the sale, if a sale has taken place.

125. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

Old Act:—*Act VIII, 1869, B.O., s. 72. Act X, 1859, s. 116.*—Before, or at the

Defaulter to be served with a written demand, &c., before, or at the time of distraint.

time when distraint is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served personally on the defaulter, or, if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

The High Court have proposed the following rule under this section:—

"8. The written demand under section 125 shall be framed in accordance with the entries contained in the application or notice referred to in Rule 6" (i. e., notice of distraint under section 141, *post.*)

126. (1) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

Right to reap, &c., pro. duce.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

Old Act.—*Act. VIII, 1869, B.O., s. 74. Act X, 1859, s. 118.*—Standing crops, and other ungathered products, may, notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries, or other places, as are commonly used by him for the purpose. If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and, in such case, shall store the same either in such granaries, or other places, as aforesaid, or in some other convenient place in the neighbourhood. In either case, the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose. Crops or products which, from their nature, do not admit of being stored, may be sold before they are cut or gathered, under the rules hereinafter provided; but, in such case, the distraint shall be made at least twenty days before the time when the crops or products, or any part of the same, would be fit for cutting or gathering.

The High Court have proposed the following rule under subsection (2):—

- (12.) In the event of it being necessary for the distraining officer, or the officer placed in charge of distrained property, to reap, to gather, or store any crops or produce, or to do any other acts for the due preservation of the same, as provided by section 126, the person at whose instance the distraint was made shall advance the funds necessary to this end.

For the charge to be made on the landlord under this rule, see Local Government rule under section 134. The rule prescribes a charge of four annas for each man employed and the actual hire of threshing-floor or store-house, if necessary.

127. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction:

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored,

Sale proclamation to be issued unless demand is satisfied.

the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage.

Place of sale.

Old Act.—*Act VIII, 1869, s. 86. Act X, 1859, s. 129.*—The sale shall be held at the place where the distrained property is deposited, or at the nearest ganj, bazar, hat, or other place of public resort if the Civil Court Ameen or other officer should be of opinion that it is likely to sell there to better advantage. The property shall be sold by public auction in one or more lots, as the officer holding the sale may think advisable; and, if the demand with the costs of distress and sale be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

Place and manner of sale of distrained property.

129. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

When produce may be sold standing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

130. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

Manner of sale.

Old Act.—*Act VIII, 1869, B.C., s. 86. Act X, 1859, s. 129.*—The sale shall be held at the place where the distrained property is deposited, or at the nearest ganj, bazar, hat, or other place of public resort, if the Civil Court Ameen or other officer should be of opinion that it is likely to sell there to better advantage. The property shall be sold by public auction in one or more lots, as the officer holding the sale may think advisable; and, if the demand with the costs of distress and sale be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

Place and manner of sale of distrained property.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Postponement of sale.
Old Act.—*Act, VIII, 1869, B.C., s. 87. Act X, 1859 s. 130.*—If, on the property being put up for sale, a fair price, in the estimation of the officer holding the sale be not offered for it, and the owner of the property, or some person authorized to act on his behalf, apply to have the sale postponed until the next day, or the next market-day if a market be held at the place of sale, the sale shall be postponed until such day, and shall be then completed at whatever price may be offered for the property.

The High Court have proposed the following rule under this section:—

(13.) The officer holding a sale under section 131 shall record a description of the property offered for sale, the names of all persons bidding for the same, and the amount bid by each; and if the sale is postponed, he shall record an order to this effect, and shall then and there notify the place where and the time when the sale will be held.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

Payment of purchase-money.
Old Act.—*Act VIII, 1869, B.C., s. 88. Act X, 1859, s. 131.*—The price of every lot shall be paid for in ready money at the time of sale, or as soon after as the officer holding the sale shall think necessary; and, in default of such payment, the property shall be put up again and sold. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Certificate to be given to purchaser.
Old Act.—See the old section quoted under section 132.

134. (1) From the proceeds of every sale of distressed property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made, from time to time, by the Local Government in this behalf.

(2) The remainder shall be applied to the discharge of the

arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

Old Act :—*Act VIII, 1861, s. 89. Act X, 1859, s. 132.*—From the proceeds of the sale of distrained property, the Officer

Proceeds of sale.

holding the sale shall make a deduction, at the rate of one anna in the rupee, on account of the costs of the sale, and shall transmit the amount to the Collector, in order that it may be credited to Government. He shall then pay, to the distrainer, the expenses incurred by the distrainer on account of the distress, and of the issue of the notice and proclamation of sale prescribed in section 124, to such amount as, after examination of the statement of expenses furnished by the distrainer, he shall think proper to allow. The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale, and, if there be any overplus, it shall be delivered to the person whose property shall have been sold.

The Local Government has prescribed the following scale of charges under this Act :—

"Section 134.—For distraint of crops.—The following scale of charges is prescribed on account of processes for distraint and sale under the Bengal Tenancy Act :—

(a) In respect of the warrant of distraint—8 annas.

(b) In respect of each man necessary to effect the distraint and also to ensure safe custody, where such man is to be left in actual possession—4 annas a day.

(c) In respect of action taken under section 126 (clause 2) for the reaping, storing, or the preservation of the crop distrained—4 annas a day for every person employed, and in addition actual hire of threshing-floor or store-house, if necessary.

"In addition to the charges under clauses (a), (b) and (c) above railway-fare, boat-hire, and ferry-charges will be levied when necessary as under Rule 3 of this chapter" (*i. e.*, Rule 3 printed under section 17, p. 59, *ante*, q. v.).

The High Court have proposed the following rules for regulating the procedure under this section :—

"14. When the sale is concluded and the sale proceeds are realized, the officer who held the sale shall, after paying the costs of the distraint and sale as directed in section 134, forthwith pay the balance into Court."

"15. The officer holding the sale shall take separate receipts for all sums paid by him as costs of the distraint and sale under section 134, sub-section (1), and if the person giving the receipt is unable to write, the receipt shall be attested by some person able to do so."

135. Officers holding sales of property under this Act.

Certain persons may not purchase.

and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Old Act :—*Act VIII, 1869, B.C., s., 90. Act X, 1859, s. 133.*—Officers holding

Officers holding sales prohibited from purchasing.

sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, property sold by such Officers.

136. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

Old Act:—*Act. VIII, 1869, B.C., s. 77. Act X, 1859, s. 121.*—If, at any time after property has been distrained, and prior to the day fixed for its being put up to sale as hereinafter provided, the owner of the property shall tender payment of the arrear demanded of him, and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

The High Court have proposed the following rule for regulating the procedure under sub-section (1):—

"16. When a distraint is withdrawn under section 136, the notification of distraint, published under section 124, shall be taken down."

137. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct

Amount paid by under-tenant for his lessor may be deducted from rent.

the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

138. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Conflict between rights of superior and inferior landlords.

139. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

Distraint of property which is under attachment.

Old Act:—Section 68 of Act VIII of 1869 B. C., see section 65 *ante*.

140. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 121 in any case in which such an application is not permitted by that section may institute a suit against the applicant for the recovery of compensation.

Suit for compensation for wrongful distraint.

Old Act:—*Act VIII, 1869, B.C., s. 96. Act X, 1859, s. 139.*—If any person shall claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainer, and such other person to try the right to the property, in the same manner, and under the same conditions, as to the time of instituting the suit, and to the consequent postponement of sale, as a person, whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand. When any such suit is instituted, the property may be released, upon security being given for the value of the same. If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer. If the claim is upheld, the Collector shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case may seem to require. Provided always that no claim to any produce

Any person whose property has been distrained for arrears of rent alleged to be due from another, may institute a suit against the distrainer, &c.

Provido.

of land liable to distraint under this Act, which, at the time of the distress may have been found in the possession of the defaulting cultivator, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim.

Act VIII, 1869, B.C., s. 97. Act X, 1859, s. 141.—If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing suit to contest the demand, or to try the right to the property as the case may be, within the period allowed by sections 90 and 96, and his property is, in consequence, brought to sale, he may nevertheless institute a suit under this Act to recover damages for the illegal distress and sale of his property.

Persons prevented from suing in time to save their property from sale, may sue for damages.

Act VIII, 1869, s. 98. Act X, 1859, s. 142.—If any person empowered to distrain property or employed for the purpose, under a written authority, by a person so empowered, shall distrain, or sell, or cause to be sold, any property, for the recovery of an arrear of rent, alleged to be due, otherwise than according to the provisions of this Act; or if any distrained property be lost, damaged, or destroyed, by reason of the distrainer not having taken proper precaution for due preservation thereof; or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act; the owner of the property may institute a suit, under this Act, to recover damages for any injury which he may have thereby sustained.

Before a tenant can recover damages on the ground of illegal distraint, he must prove what loss he has actually sustained (*Ujan Dewan v. Piannath Mandal*, 8 W. R. 220). A suit for compensation for illegal distraint does not lie in the Small Cause Court (*Haidar Ali v. Jafar Ali*, Ind. 1 Cal. 183).

Under the old law it was held that a landlord was not liable for compensation when his agent, who was not authorized in that behalf, made any illegal distraint (*Ramjay Mandal v. Kali Mahan Roy Chowdhry*, Marsh. 283; see also *Syama Sundari Devi v. Malyat Mandal*, 11 W. R. 101).

141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application under this chapter, to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this chapter to the Civil Court:

Power for Local Government to authorize distraint in certain cases.

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce,

and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

• 141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application under this chapter to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this chapter to the Civil Court :

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

The High Court have proposed the following form of notice under sub-section (2) :—

“18. Every person distraining produce by virtue of the authority conferred on him under section 141 of Act VIII of 1885, shall give notice of such distraint to the Civil Court having jurisdiction to entertain an application for the distraint of such produce in a tabular form which shall contain the following particulars :—

- (a) The name and address of the person at whose instance the distraint was made, and a description of his interest in the property, whether as proprietor, tenure-holder, or raiyat.
- (b) The name of the defaulter and of the place in which he resides, or was known to be last residing.
- (c) The amount of the arrear with interest, if any, and the period in respect of which it is claimed.

- (d) The holding in respect of which the arrear is claimed, the boundaries thereof, or such other particulars as may suffice for its identification.
- (e) The description and approximate value of the produce distrained, and if the same has been reaped or gathered, the place in which it is stored.
- (f) The name of the person by whom the distraint was actually made, and the name and address of the person in whose charge the produce has been placed.
- (g) The date on which the distraint was made.
- (h) If the crop or produce is standing or ungathered, the time at which it is likely to be cut or gathered."

142. The High Court may, from time to time, make rules consistent with this Act for regulating the procedure in all cases under this chapter.

Power for High Court to make rules.

The High Court have made rules under this section and they have been quoted under the appropriate sections of this chapter.

CHAPTER XIII.

JUDICIAL PROCEDURE.

143. (1) The High Court may, from time to time, with the approval of the Governor-General in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

The power intended to be conferred upon the High Court by this sub-section is an executive power. The sanction of the Governor-General in Council would not be necessary in a case in which the High Court judicially determines that such a portion or such a section of the Civil Procedure Code does not apply to the Bengal Tenancy Act. It is doubtful, however, whether the High Court's power under this section is confined to merely *declaring* that any portions or sections of the Civil Procedure Code will not apply to this Act or extends to the making of any rules of procedure distinct from the provisions of the Civil Procedure Code. The last clause of sub-section (1) is however extensive: Properly read it means that the High Court can, with the approval of the Governor-General in Council, make rules consistent with this Act, declaring that any portions of the Civil Procedure Code shall apply to suits between landlords and tenants as such or to any specified classes of such suits, subject to the modifications specified in the rules. So read by implication the section provides that the High Court is empowered to frame rules in modification of any portion of the Code of Civil Procedure.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

Act X of 1859 had provided the procedure of rent suits. In Act VIII of 1869 (B. C.) however, section 34 prescribed: "Save as in this Act is otherwise provided, suits of every description brought for any cause of action arising under this Act, and all proceedings therein, shall be regulated by the Code of Civil Procedure passed by the Governor-General in Council, being Act No. VIII of 1859, and by such further and other enactments of the Governor-General in Council in relation to Civil Procedure as now are, or from time to time may be, in force; and all the provisions of the said Act and of such other enactments shall apply to such suits." The present section is also similar in effect, only the High Court may from time to time frame rules modifying the procedure with the sanction of the Governor-General in Council.

Section 108 of the Civil Procedure Code is made applicable to rent suits under the Act by this section—(*Mussta. Draba Mayi Gupta v. Tarachurn Sen*, 7 B. L. R., 207; 16 W. R., 17.) Mark, however, that while the old Act said "*suits of every description, &c., and all proceedings therein shall be regulated by the Code of Civil Procedure, &c.,*" the present sub-section only says that "the Code of Civil Procedure shall apply to all such suits" (*i. e., suits between landlord and tenant as such or to any specified classes of such suits*). Does the word *suit* here include execution proceedings or interlocutory proceedings? Does the Civil Procedure Code apply to those proceedings subject to the provisions of the Act? I think an affirmative answer is to be returned to this question. The word 'suit' has not been defined in this Act or in the Civil Procedure Code. It was, however, held in a Full Bench of the Bombay High Court that a suit is a "judicial proceeding"—(*Ratunchand Shrichand v. Hanmantrav Shiv Bakas*, 6 Bom. H. C. Rep., 166;) and the same opinion was adopted in a Full Bench of the Calcutta High Court in a batch of cases reported at page 662 of I. L. R., 3 Cal. It may be submitted that the word 'suit' in this section should be read in the same sense in which the word 'proceedings' in the General Clauses' Act has been read by the High Courts, *viz.*, "that it includes all proceedings in any suit from the date of its institution to its final disposal, including proceedings in appeal." This meaning is evident from the fact that the chapter is headed as "*Judicial Procedure*," and that the marginal note of the following section (144) is "*jurisdiction in proceedings under the Act*." *Vide* also cl. (h) of section 148.

But see *Hossein Bux v. Mutookdhari*, I. L. R., 14 Cal. 312.

The Civil Procedure Code shall apply:—An application under s. 93 of the Bengal Tenancy Act is not a suit between a landlord and tenant within the meaning of s. 143, and no appeal lies from an order rejecting such an application—(*Hossein Bux v. Mutukdhari Lal*, I. L. R., 14 Cal., 312). See the judgment quoted under section 93 note, p. 348 *ante*.

Does this Act affect proceedings commenced before its introduction.—See pp. 19—23 *ante*; and also section 174 *post*.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the applica-

tion shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

Old law :—Section 35 of Act VIII of 1869 (B. C.) provided: "The cause of action in suit brought for the delivery of any potta or kabuliya, or for the cancelment of a lease, for the determination of rates of rent, for illegal exactions of rent, cess, or impost, for refusal of receipts for rent paid, the extortion of rent, for excessive demand of rent, for arrear of rent, for abatement of rent, and for refusing to register transfers, succession, or divisions under section 26, shall be deemed to have arisen within the jurisdiction of the Court which would have had jurisdiction to entertain a suit for the recovery of the land or other immoveable property in relation to which the cause of action arose, and shall be brought in such Court and in no other Court." Hence under the old law the suits enumerated in this section were treated as suits for lands or other immoveable property; but all other descriptions of suits were to be brought under the Civil Procedure Code in the Court within the jurisdiction of which the cause of action shall have arisen, or within the jurisdiction of which the defendants at the time of the commencement of the suit shall dwell, or personally work for gain.

How changed :—It is obvious that the present law is considerably changed. The cause of action in all suits between landlord and tenant shall be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

Cause of action :—"The words cause of action mean everything material and essential to prove in support of the plaintiff's case, all those things which are necessary to give a right of action, whether they are to be done by the plaintiff or by a third person; neither the making of the contract nor the breach of it constitutes the whole cause of action, but each is a part of the cause of action, and so also is the consideration given for the defendant's promise, and so is the performance of any condition, or the happening of any event upon which the plaintiff's right to sue depends." *Macpherson's Civil Procedure Code*.

Pecuniary limit :—Neither of the sub-sections provides for the pecuniary limit. They only give us rules for the local jurisdiction. This section should therefore be read with the Bengal Civil Court's Act which prescribes Rs. 1,000 to be the pecuniary limit of the Munsiff, the Subordinate Judge and the District Judge taking cognizance of suits when the value of the property exceeds Rs. 1,000. The pecuniary limit is, however, to be determined by the value of the tenure or holding and not by its rental; and the mode of computing the value of the subject-matter of a suit, as provided by Act VII of 1870, applies only to determining the Court-fee to be paid, and not to the question of jurisdiction—(*Jubraj Singh v. Inderjeet Mahaton*, 18 W. R., 108; *Nanhoon Singh v. Toofani Singh*, 20 W. R., 33; *Chander Nath Bhattacharji v. Brindabun Shaha*, 25 W. R., 39.) Hence the question whether a Munsiff has jurisdiction or not does not depend upon the amount of the Court-fees to be paid but upon the actual market value of the tenure or holding. Clause 11 of section 7 of the Court Fees' Act, however, gives the rules for determining the amount of Court-fee payable in suits. That clause runs thus :—

"In the following suits between landlord and tenant :

- (a) for the delivery by a tenant of the counterpart of a lease,
- (b) to enhance the rent of a tenant having a right of occupancy,
- (c) for the delivery by a landlord of a lease,

- (d) to contest a notice of ejectment,
- (e) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and
- (f) for abatement of rent :
according to amount of the rent of the land to which the suit refers, payable for the years next before the date of presenting the plaint."

Jurisdiction in suits for rent of homestead land :— The question of Jurisdiction in a suit for rent on account of homestead land is not affected by this Act. This section contemplates to confer Jurisdiction on Civil Courts within the local limit of which the land is situate and the small Cause Court and the ordinary Court are both Civil Courts. The question whether an ordinary Civil Court or a Small Cause Court having concurrent Jurisdiction will try suits for rent of homestead land is determined by the Small Cause Court. Under the old Small Cause Court Act (XI of 1865) suits for arrears of rent of a homestead land were cognizable by the Small Cause Court. Section 6 of Act XI of 1865 runs thus.

"The following are the suits which shall be cognizable by Court of Small Causes, namely, claims for money due on bond or other contract or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage or demand does not exceed in amount or value the sum of five hundred rupees whether on a balance of account or otherwise; Provided that no action shall lie in any such Court—(1) on a balance of partnership account, unless the balance shall have been struck by the parties or their agent; (2) for a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will; (3) for the recovery of damages on account of an alleged personal injury, unless actual pecuniary damage shall have resulted from the injury; (4) for any claim for rent of land or other claim for which a suit *may now* be brought before a revenue officer, unless as regards arrears of rent for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly invested by the Local Government with jurisdiction over claims to such arrears."

The word '*now*' in the clause is evidently meant "at the commencement of the Act XI 1865." At that time Act X of 1859 was in force and section 23 clause (4) of that Act provided that "all suits for arrears of rent due on account of land either kherajee or lakherajee, or on account of any rights of pasturage, forest right, fisheries or the like, shall be cognizable by the collectors of revenue." It was held that 'land' under this section meant agricultural land. See pp. 31—35 *ante*. Hence it followed that suits for arrears of homestead land were not cognizable by the revenue officer under Act X of 1859 and were therefore cognizable under section 6 provide 4 of Act XI of 1865 by the Small Cause Court. This question was similarly decided by Wilson, J., upon a reference of the Judge of the Small Cause Court of Pubna. The new Small Cause Court Act (IX of 1887) has however brought a change. Section 15 of that Act provides :

(1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, the Local Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.

And section 16 provides.

Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

And the 2nd schedule except from the cognizance of the Court of Small Causes the following.

- (1) A suit concerning an act or order purporting to be done or made by the Governor-General in Council or a Local Government, or by the Governor General or a Governor, or by a Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or concerning an act purporting to be done by any person by order of the Governor General in Council or a Local Government;
- (2) a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting in the execution of his office;
- (3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards in the execution of his office;
- (4) a suit for the possession of immoveable property or for the recovery of an interest in such property;
- (5) a suit for the partition of immoveable property;
- (6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immoveable property for the redemption of the mortgage;
- (7) a suit for the assessment, enhancement, abatement or apportionment of the rent of immoveable property;
- (8) a suit for recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto;
- (9) a suit concerning the liability of land to be assessed to land-revenue;
- (10) a suit to restrain waste;
- (11) a suit for the determination or enforcement of any other right to or interest in immoveable property;
- (12) a suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office;
- (13) a suit to enforce payment of the allowance or fees respectively called *mālikāna* and *hakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property, or in an hereditary office, or in a shrine or other religious institution;
- (14) a suit to recover from a person to whom compensation has been paid under the Land Acquisition Act, 1870, the whole or any part of the compensation;
- (15) a suit for the specific performance or rescission of a contract;
- (16) a suit for the rectification or cancellation of an instrument;
- (17) a suit to obtain an injunction;
- (18) a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of

- trust, and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution ;
- (19) a suit for a declaratory decree, not being a suit instituted under section 283 or section 332 of the Code of Civil Procedure ; XIV of 1882.
- (20) a suit instituted under section 283 or section 332 of the Code of Civil Procedure ;
- (21) a suit to set aside an attachment by a Court or a revenue-authority, or a sale, mortgage, lease or other transfer by a Court or a revenue-authority or by a guardian ;
- (22) a suit for property which the plaintiff has conveyed while insane ;
- (23) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial capacity ;
- (24) a suit to contest an award ;
- (25) a suit upon a foreign judgment as defined in the Code of Civil Procedure or upon a judgment obtained in British India ;
- (26) a suit to compel a refund of assets improperly distributed under section 295 of the Code of Civil Procedure ;
- (27) a suit under the Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets ;
- (28) a suit for a legacy or for the whole or a share of a residue bequeathed by a testator or for the whole or a share of the property of an intestate ;
- (29) (a) A suit for a dissolution of partnership or for the winding-up of the business of a partnership after its dissolution ;
 (b) for an account of partnership transactions ; or
 (c) for a balance of partnership-account, unless the balance has been struck by the parties or their agents ;
- (30) a suit for an account of property and for its due administration under decree ;
- (31) any other suit for an account, including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee, and a suit for the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant ;
- (32) a suit for a general average loss or for salvage ;
- (33) a suit for compensation in respect of collision between ships ;
- (34) a suit on a policy of insurance or for the recovery of any premium paid under any such policy ;
- (35) suit for compensation—
 (a) for loss occasioned by the death of a person caused by actionable wrong ;
 (b) for wrongful arrest, restraint or confinement ;
 (c) for malicious prosecution ;
 (d) for libel ;
 (e) for slander ;
 (f) for adultery or seduction ;
 (g) for breach of contract of betrothal or promise of marriage ;
 (h) for inducing a person to break a contract made with the plaintiff ;
 (i) for obstruction of an easement or diversion of a watercourse ;
 (j) for illegal, improper or excessive distress or attachment ;
 (k) for improper arrest under Chapter XXXIV of the Code of Civil Procedure, or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV of that Code ; or

- (1) for injury to the person in any case not specified in the foregoing sub-clauses of this clause;
- (36) a suit by a Mahommadan for exigible (*mu'ajjal*) or deferred (*mu'wajjal*) dower;
- (37) a suit for the restitution of conjugal rights, for the recovery of a wife, for the custody of a minor, or for;
- (38) a suit relating to maintenance;
- (39) a suit for arrears of land-revenue, village-expenses or other sums payable to the representative of a village-community or to his heir or other successor in title;
- (40) a suit for profits payable by the representative of a village community or by his heir or other successor in title after payment of land revenue, village expenses and other sums;
- (41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer, or by a manager of joint-property, or a member of an undivided family in respect of a payment made by him on account of the property or family;
- (42) a suit by one of several joint mortgagors of immoveable property for contribution in respect of money paid by him for the redemption of the mortgaged property;
- (43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue authority on account of an arrear of land revenue or of a demand recoverable as an arrear of land revenue;
- (44) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

Under clause 8 of this schedule all suits for arrears of rent except house rent are cognizable by ordinary Civil Courts and excepted from the jurisdiction of the Small Cause Court.

145. Every *naib* or *gomashta* of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

Naibs or gomashtas to be recognised agents.

Section 24 of Act VIII of 1869 (B. C.) had: "All suits which under the provisions of this Act may be brought by or against zemindars or other persons in the receipt of the rent of land, may be brought by or against *surburahkars* or *tehsildars* of estates held under *khas* management, whether such estates are the property of Government or of individuals."

Section 36 of Act XIV of 1882 provides: "Any appearance, application, or act in or to any Court required or authorized by law to be made or done by a party to a suit or appeal in such Court may, except when otherwise expressly provided by any law for the time being in force, be made or done by the party in person or by his recognized agent, or by a pleader duly appointed to act on his behalf. Provided that any appearance may be made by the party in person if the Court so direct."

And section 37: "The recognized agents or parties by whom such appearances, applications, and acts, may be made or done are:—

- (a) Persons holding general powers of attorney from parties not resident within the local limits of the jurisdiction of the Court within which the appearance, application or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties.
- (b) Muktars duly certificated under any law for the time being in force, and holding special powers-of-attorney authorizing them to do on behalf of their principals such acts as may legally be done by mukters.
- (c) Persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which the appearance, application and act is made or done in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts."

The written authority empowering the naib or gumashta to appear, act or apply for the principal requires to be stamped, under art. 50 Sched. I of Act 1879 as follows:—

"(a) When executed for the sole purpose of procuring the presentation of one or more documents for registration, in relation to a single transaction ...	Eight annas.
"(b) When authorizing one person or more to act in a single transaction other than that mentioned in (a) ...	One rupee.
"(c) When authorizing not more than five persons to act jointly and severally in more than one transaction or generally ...	Five rupees.
"(d) When authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally ...	Ten rupees.
"(e) In any other case ...	One rupee for each person authorized.

"**Explanation.**—For the purposes of art. 50, more persons than one when belonging to the same firm shall be deemed to be one person."

When an instrument contains a several power-of-attorney conferred by two or more persons, it requires a separate stamp for each power (In the matter of Jay Kissen Mukerjee, per Garth, C. J., and Field and Wilson, JJ., Board's Rev. Cir. December, 1885, p. 108).

As to the agent's power to sue; see section 148 notes, *Who is to sue?*

146. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, entered in a special register to be kept by each Civil Court, in such form as the Local Government may, from time to time, prescribe in this behalf.

Section 42 of Act VIII of 1869 (B. C.) provided: "All suits brought under any of the provisions of this Act shall be entered in a special register of the Court kept for that purpose."

The particulars referred to in section 58 of the Code of Civil Procedure are those mentioned in section 50 of the Code, viz.,—

- (a) "The name of the Court in which the suit is brought,
- (b) The name, description and place of residence of the plaintiff,
- (c) The name, description and place of residence of the defendant so far as they can be ascertained,
- (d) A plain and concise statement of the circumstances constituting the cause of action where and when it arose.
- (e) A demand of the relief which the plaintiff claims, and
- (f) If the plaintiff has allowed a set-off or relinquished a portion of his claim the amount so allowed or relinquished."

This provision is introduced obviously for statistical purposes, and not for the purpose of separating into parts the jurisdiction exercised by one Court—(Jallalooddeen v. Major James Brown, 18 W. R., 99.) The question whether a suit is one under Act VIII of 1869 (B. C.) or not appears to be of the most frivolous character; and the mere fact of a suit being by some mistake of the office probably registered in the book of rent suits ought not to conclude plaintiff—(Ram Narain Mitter v. Nobin Chunder Moordafarash, 18 W. R., 208.) There is no longer any such distinction as one side of the Court from another, Revenue and Civil—(Puriang Dutt Roy v. Fekoo Roy, 19 W. R., 160; Lala Bhugwan Sahai v. Sangesar Chowdhry, 19 W. R., 431; Gobind Mahton v. Ram Khelawan Singh, 22 W. R., 478)

The Lieut.-Governor has directed that the special register to be kept by each Civil Court, in accordance with the provisions of this section, shall be in the form prescribed by section 58, Act XIV of 1882 and numbered as 116 in the 4th schedule to that Act (Cal. Gaz. March 3, 1886).

147. Subject to the provisions of section 373 of the Code of Civil Procedure, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

"We have substituted for the section of the Bill No. II, regulating the instalments in which rent is to be payable, the following simpler provisions, namely:—

'53. Subject to agreement or established usage, a money-rent payable by a tenure-holder or raiyat shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.'

And to prevent raiyats being harassed by successive suits for arrears, when by agreement or custom, a larger number of instalments than four may be established, we have inserted in Chapter XIII, a section (147) enacting in effect that such suits shall not be instituted against a raiyat oftener than once in three months." (*Select Committee's Report*.)

In this provision the Legislature has adopted the principle enunciated in (Taruk Chunder Mookerjee v. Pancho Mohini Dabi, 8 C. L. R., 297; I. L. R., 6 Cal., 791.)

Section 373 of the Civil Procedure Code provides: "If, at any time after the institution of the suit, the Court is satisfied, on the application of the plaintiff (a) that the suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of

the suit, or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit. If the plaintiff withdraw from the suit, or abandon part of his claim without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part. Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others."

In connection with this section, shall be read section 43 of the Civil Procedure Code. It provides:—

"Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. If a plaintiff omit to sue in respect of, or intentionally relinquish any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted. For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

"Illustration.

"A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881."

For decisions under this section, see pp. 261—281 *ante*.

This section prohibits successive rent-suits within three months. A question may arise as to whether a suit for enhancement of rent brought within three months of a suit for arrears of rent will lie. Section 37 of the Act provides for a limit of successive suits for the enhancement of rent, and section 147 for two successive suits for arrears of rent; so far as the wording of section 147 goes, it is clear that if in the suit for enhancement of rent, a claim for the recovery of the enhanced rent is also made, section 147 will be a bar. But if the suit for enhancement is simply a suit for declaration of a right to enhance (see pp. 163 and 164 of my edition, and section 154 of the Act) it is doubtful if section 147 will be a bar. On the other hand, it may be contended that section 147 is meant to protect raiyats from harrassing suits, and if the Legislature prohibited two successive suits for recovery of rent within three months, *a fortiori* a suit for enhancement of rent within three months of a suit for recovery of rent is prohibited.

148. The following rules shall apply to suits for the recovery of rent:—

Procedure in rent-suits.

(a) sections 121 to 127 (both inclusive), 129, 305, and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit:

(b) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the

extent or boundaries, in lieu thereof a description sufficient for identification :

(c) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only :

(d) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866 ;

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served :

(e) a written statement shall not be filed without the leave of the Court :

(f) the rules for recording the evidence of witnesses, prescribed by section 189 of the Code of Civil Procedure, shall apply, whether an appeal is allowed or not :

(g) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears :

(h) notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

This section contemplates the procedure for suits for the recovery of rent only.

Clause (a) :—Sections 121 to 127 of the Code of Civil Procedure relate to the examination of parties by interrogatories, the mode of their service and the consequence of omission to answer.

Section 129 relates to the power of the Court to order discovery of documents.

Section 305 enables the Court to postpone the sale of any property if the judgment-debtor can satisfy it that the amount of the decree can be raised by mortgage, lease, or private sale thereof.

Sections 320 to 326 provide that if the Local Government with the previous sanction of the Governor-General in Council so order, the Collector may be invested, in regard to a specified local area, with the power of executing decrees and selling immovable properties in satisfaction thereof.

Clause (b) :—Section 43 of Act VIII of 1869 (B. C.) provided : “ In any suit hereafter to be brought for the recovery of an arrear of rent, the plaint shall specify the name of the village and estate, and of the pergunnah or other local division in which the land is situate, the yearly rent of the land, the amount (if any) received on account of the year for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due. If the arrear

is alleged to be due from any raiyat, the plaint shall further specify the quantity of land; and where fields have been numbered in a Government survey, the number (if it be possible to give it) of each field."

Section 50 of Act XIV of 1882 runs thus: "The plaint must contain the following particulars:—

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant; so far as they can be ascertained;
- (d) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose;
- (e) a demand of the relief which the plaintiff claims; and
- (f) if the plaintiff has allowed a set-off or relinquished a portion of his claim the amount so allowed or relinquished.

If the plaintiff seeks the recovery of money, the plaint must state the precise amount so far as the case admits.

In a suit for mesne profits, and in a suit for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the amount sued for.

When the plaintiff sues in a representative character, the plaint should show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps necessary to enable him to institute a suit concerning it.

The plaint must show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

If the cause of action be beyond the period ordinarily allowed by any law for instituting the suit, the plaint must show the ground upon which exemption from such law is claimed."

In addition to these particulars, those that are mentioned in the section should be given.

Who is to sue?—When a person sues on behalf of his principal under a power-of-attorney the principal's name should appear as plaintiff—(*Choonee Sukul v. Hur Pershad*, 1 All., 277.) By section 24, Act VIII (B.C.) of 1869, the *surbarakars* and *tehsildars* might institute suits for rent, but the *zemindar's* name, and not their own names, must be entered as plaintiff—(*Ladlee Pershad v. Gunga Prosad*, 4 All., 59.) A *gomashta* or *ammooktear* cannot bring a suit for rent in his own name—(*Kunj Bihary Roy v. Purno Chunder Chatterji*, 12 C. L. R., 55): suits for property should be brought in the name of the real and not in the name of the colorable owner—(*Tinaoconnessa v. Woojjul Monee Dasee*, 20 W. R., 72). In a suit for rent, the plaintiff must elect between the ostensible and the real owner—(*Sheik Kamyab v. Musst. Omda Begum* and *Moulvi Abdul Wahab v. Musst. Omda Begum*, Sp. W. R., (Act X), 88.); or the plaintiff must proceed against the person really in possession—(*Bepin Behari Chowdhry v. Ram Chundra Roy*, 5 B. L. R., 235; 14 W. R., 12; *Raj Kishen Mozoomdar v. Heeralal Bukshee*, Marsh., 188; *Prosunno Kumar Pal Chowdhry v. Koylash Chundra Pal Chowdhry*, 2 Ind. Jur., 327; 8 W. R., 428.) The *zemindar* is, however, entitled to sue his recorded tenant—*Vide notes, ante, section 73 and those referred to therein*. Where the plaintiff has sold his rights during the pendency of his suit, it is irregular to substitute for his name that of the purchaser, but it is an irregularity that can be cured by the consent of the defendant—(*Beer Chunder Roy Mohapatra v. Shaik Tumizuddin*, 12 W. R., 87; 3 B. L. R., 214.) See the effect of section 72 upon this.

A corporation should sue in its own name—(*Ramdass Sen v. Stephenson*, W. R., 366;) unregistered or unincorporated company must disclose the names of

its members when suing—(*Koylash Chunder Roy v. Ellis*, 8 W. R., 45); but such of the members as are minors can neither sue, nor be joined as co-plaintiffs, in their own names—(*Pitam Das and Gourree Dutt v. Ram Done Das*, 1 Taylor, 279.) A corporate body should be sued in its corporate name. A suit against "A B," agent of the corporation, is bad—(*Nobin Chunder Paul v. Stephenson*, 15 W. R., 534; *Mohendranath Mookerjee, Overseer*, 9 W. R., 206); so in a suit against A B, proprietor of an estate, A B and not his *karenda* should be the defendant—(*Madho Rao Apav v. Thakur Pershad*, 4 Agra, 127); in the case of an unincorporated or unregistered company, the names of the persons composing it must be set forth as a rule; but if the plaintiff cannot find out the names, he may sue the company in the name in which they are carrying on business, stating his inability to give a better description—(*Koylash Chunder Roy v. Ellis*, 8 W. R., 45; *Kannon v. Koylash Chunder Roy*, 25 W. R., 117.) To describe the plaintiff as "A B, an infant residing in Chitpore Road in the Town of Calcutta," is not a sufficient description of his place of abode under section 50 of the Civil Procedure Code; nor is it sufficient under that section to describe the defendant as "formerly of Calcutta," without alleging that the plaintiff has been unable to ascertain his place of residence more definitely—(*Bibi Solomon v. Abdul Aziz*, 4 C. L. R., 366.)

The description contemplated by the Code includes all the titles by which the party is generally known; and if a party from obstinacy, or pique or anything in fact but a *bond fide* dispute as to the right to a title, persistently refuses to give his adversary that title by which he is generally recognised, the Court ought not to permit that species of insult. Defendant objected that his titles were not set forth, and asked that he might be described as in the Government Gazette, "The Hon'ble Maharajah Meerga Vijaya Rama Gujaputti Raz Mane Sultan Bahadur, Guru of Vizianagram," and plaintiff was granted a week to amend but did not. It was held by the Privy Council overruling the High Court that, with the exception of the word "Honorable" which seemed less a matter of description than an honorary distinction, as it applied to the members of the Council, the Judge was right in insisting on the titles, and in rejecting the plaint on non-compliance as the titles could not be rationally disputed—(*Raja Sitaram Krishna v. Raja Vijaya Rama*, 3 Mad., 31; 18 W. R., 301.) In this case their Lordships disapproved of the case of *Kishen Chand Golecha v. Moghraj Kobbivia Roy Bahadur*, 12 W. R., 450, in which the High Court at Calcutta refused to insist on the insertion of the words "Roy Bahadur."

In suits to recover possession, the date of dispossession must be given as accurately as possible—(*Boodyanath Surma v. Ojan Bibi*, 11 W. R., 238.) In suit for land in Bengal, the boundaries need not be stated in the plaint, if the description given is sufficient for its identification—(*Aftabuddin v. Shamsuddin Mullik*, 18 W. R., 461.) But see against this opinion—(*Mahomed Ismael v. Lala Dhandu Kishore Narain*, 25 W. R., 39.) In the North-West the fields are numbered and their position is given—(*Fyz Ahmed Khan v. Gunga*, S. D. R., N. W., 1857, 112; *Sahalwun Sing v. Mahewur Bun Sing*, 9 B. L. L. 169.)

A person may base his claim to land on a hereditary right, and also on the right of occupancy—(*Woodie Sing v. Buldeo Sing*, 21 W. R., 12.)

Incompetency to bring a suit is a defect not admitting of cure, and the Court is bound to consider such an objection, though urged for the first time orally in special appeal—(*Radha Kishen v. Bukhtwar Lal*, 1 Agra, F. B., 175.) Objections for want of description should be taken at the earliest opportunity and before the first hearing—(*Rajnarain Bose v. Universal Life Assurance Company*, 1 L. R., 7 Cal., 594; *Brojonath Deiskur v. Andomoyi Dasi*, 8 B. L. R., 208.) The general prayer will support an injunction—(*Kristomahini Dasi v. Kally Prosunno Ghose*, 1 L. R., 6 Cal., 485.)

Clause (c) :—In suits for simply *recovering rent* the summons as usual is for the final disposal of the suit. When it is a suit for enhancement of rent, ordinarily the summons should be for settlement of issues, and so in suits for damages or ejectment.

Clause (d) :—Unless ruled by the High Court, the Courts cannot adopt this mode of service. The presumption is the same as clause (f) of section 114 of the Evidence Act. But suppose the letter is posted but not registered, will the presumption arise? Under the Evidence Act it would; but under Act VIII of 1862 B.C., it would not.

Clause (e) :—Section 18 of the Small Cause Court Act (No. XI of 1865) runs thus: "In all suits under this Act the summons to the defendant shall be for the final disposal of the suit, and no written statement other than the plaint shall be received unless required by the Court." This clause is less imperative than the Small Cause Court section; when the written statement has been filed and is in the record the leave of the Court will be presumed to have been taken.

This clause limits the operation of section 140 of the Civil Procedure Code and requires the Court to proceed under sections 146 and 147 of that Code.

Clause (f) :—Section 189 of the Civil Procedure Code provides: "In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record."

Clause (g) :—This clause is very vaguely drawn up. Section 19 of Act XI of 1865 has: "When a decree is passed in any suit of the nature and amount cognizable under this Act, the Court passing the decree may, at the same time that it passes the decree on the verbal application of the party in whose favor the decree is given, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor, if he is within the local limits of the jurisdiction of the Court passing the decree, or against the moveable property of the judgment-debtor within the same limit." So section 256 of the Civil Procedure Code has: "When a decree is passed for a sum of money only and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor, if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits." This section only applies to cases in which the decree-holder wishes to have immediate execution—(Anonymous case, 9 W. R., 174.) A debtor is not entitled to immunity from arrest until he has had a reasonable time to return home—(De Pennings v. Moitro, 9 W. R., 349.) The section is so indefinitely worded that it seems that the Court may order execution against persons and property simultaneously. The power ought, however, to be exercised with discretion, and the Court may refuse execution against person and property at the same time—(Davis v. Middleton, 8 W. R., 232); only execution against immoveable property by way of ejectment is saved from this summary power.

Clause (h) :—Section 232 of the Civil Procedure Code provides: "If a decree be transferred by assignment in writing, or by operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder: Provided as follows :—

(a) Where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution :

(b) Where a decree for money against several persons has been transferred to one of them it shall not be executed against the others."

The fact that an assignment of a decree for arrears of rent was made before the Tenancy Act will not protect from the provisions of s. 148 (h) an assignee who proceeds to execution afterwards ; but execution cannot be refused where, before that Act came into force, the assignment had been recognised by a Court of execution under s. 232 of the Civil Procedure Code,—(*Kailas Chunder v. Jadunath*, I. L. R., 14 Cal., 380.) The facts of this case were as follows : A decree for arrears of rent was obtained by Joykali and Gris Chunder. On the 13th June 1885, Kailas Chunder obtained an order from the Civil Court in the proceedings in execution of that decree recognizing him as assignee of the right of Grish Chunder, to a 4 annas' share. In September 1885, Joykali applied to execute the entire decree. In consequence of an informality that application was returned for amendment, and finally it was not presented and granted by the Court until the 10th November. In the meantime the Bengal Tenancy Act came into operation on the 15th November 1885, on the 27th March Kailas petitioned to the Civil Court stating that he and Mati Lal had, in June 1884, purchased the rights of Jaykali, and asked that their names be substituted in her place so that they might be allowed to execute the decree. The Subordinate Judge disallowed the objections of the judgment-debtors, which were raised under s. 148 (h) of the Bengal Tenancy Act, but the District Judge on appeal held that execution proved in consequence of the assignments which had been made by the original decree-holders. He accordingly ordered the attachment of the property to be withdrawn and the sale to be stayed *sine die*. The decree-holders appealed to the High Court. The judgment of the Court (Prinsep and Beverley, JJ.) after setting out the facts as above, provided as follows :

"Section 148 (h) declares that, "notwithstanding anything contained in s. 232 of the Code of Civil Procedure, an application for execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him." In this case it is admitted that the exception stated does not exist. We have therefore to consider first whether the assignment of the rights of Grish Chunder, which was admitted by the Court of execution under s. 232 before the Bengal Tenancy Act became law, entitles the assignee to proceed to execution in respect of the right of the assignee ; next, whether the assignment of the rights of Jaikali, said to have been made before the operation of the Bengal Tenancy Act but not notified to, or recognised by, the Civil Courts until after that Act, entitles the assignee to the assistance of the Court in executing the decree ; and lastly, whether the application for execution made by Jaikali can proceed. Now, in respect of the rights of Grish Chunder, we are of opinion that, inasmuch as the Civil Court, by an order regularly passed under s. 232 before the Bengal Tenancy came into operation, permitted Kailas Chunder to execute the decree as one of the decree-holders, the Bengal Tenancy Act does not apply. The effect of this order in our opinion is to substitute Kailas Chunder as a decree-holder in the place of Grish Chunder, the original decree-holder, and after that order was made under s. 232, it was not for the Court executing the decree to consider any circumstances under which it was made. The application of s. 148 (h) is not retrospective so as to affect that order. It contains rather a prohibition to the Courts to abstain from granting any application for execution of a decree for

fixed immediately after the expiration of fourteen clear days from the date of the due service of the summons.

- (g.) Where the defendant appears and makes answer or denies to contest the claim, the case shall be ordinarily placed in the list of defended causes and come on in its turn; provided that if the case appear likely to be a short one, the Judge may take it up and try it immediately after the undefended cases fixed for the day, or may set it down for hearing on an early day, if either of such courses appear to him to be expedient with reference to the state of his file or the convenience of the parties. (Rule No. 72 of the 18th September 1884.)

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to third person.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

Shall not take cognizance of the plea:—The only plea that is barred is that the 'money is not due to the plaintiff but to a third person.' This section does not apply where the defendant does not admit that money is due from him on account of rent. Where the defendant does not admit his rent to be due but pleads the right of a third person, the old precedent will apply, *i. e.*, the issue will be 'is the plaintiff entitled to recover rent,' and it will be tried in the rent suit in which the plea is taken.

Intervener:—See pp. 269-272.

Notice of payment:—The notice under sub-section (2) will be served according to the following rule framed by the Local Government in exercise of the power vested in it by section 189, *post*:—

"Where no other mode of service of notice is prescribed by the Tenancy Act or by these rules, service shall be effected in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, if the notice is addressed to only one person, and if it is addressed to a number of persons occupying or owning land in the same village, the notice shall be served by proclamation and beat of drum, and by posting it in the presence of not less than two persons on some conspicuous place in the village, and also by fixing it up in the village-office, if any, where the rent is usually paid."

Institutes a suit:—A suit by a third person under clause (3) of s. 149 of the Bengal Tenancy Act is not a title suit, and need not be stamped as such, *Per Tottenham, J.*—such suit is in the nature of a suit for an injunction under the Specific Relief Act or else a declaratory suit.—*Jagadamba Devi v. Protap Ghosh, I. L. R., 14 Cal., 537.* The facts of this case were as follows: In a suit for rent by one Rashvihari against Protap Ghosh and Bishun Laha before the munsiff of Dubruijporc, the defendants alleging that the rent claimed, namely, Rs. 2-11-6 pies was due to one Jagadamba Devi paid it into Court under the first clause of s. 149 of the Bengal Tenancy Act (VIII of 1885), notice under the second clause of that section having been served on Jagadamba Devi, she filed a suit within three months against all the parties to the rent suit, in which she claimed the amount deposited and a further amount of 8 annas, which she alleged to have fallen due subsequent to the period owned by the rent suit. The munsiff considering that the 'suit' referred to in the 3rd para. of section 149 of the Act was a title 'suit'; ordered Jagadamba Devi's plaint to be returned in order that it might be so amended as to render it a plaint in a title suit, and the Court fee increased accordingly. Jagadamba Devi not complying with that order filed a petition contesting the munsiff's view of the law. The munsiff then directed that in accordance with his previous order, the plaint should be returned to the petitioner in order that it might be filed within 4 days, with a stamp calculated on the valuation of the suit, regarded as a title suit. This order was dated 12th January 1887. Instead, however, of complying with such order, Jagadamba filed an appeal against it. The District Judge in referring the case stated that, in so far as the Court-fee was concerned, he did not think that any right of appeal existed as there was no "order of rejection." But that, so far as the order was to be regarded as an order returning the plaint for amendment, an appeal would lie to him under clause (b) of s. 588 of this Civil Procedure Code, and in his letter of reference he stated his reason for referring the case as follows:—

"In order to decide it I must determine of what nature the suit contemplated by s. 149 (3), Bengal Tenancy Act, is, whether, *e. g.*, it is (a) a suit to declare the plaintiff's title as landlord as against the plaintiff in the rent suit in respect of the lands comprising the holding the rent of which was sued for therein.

"There was, I believe, no express authority on the subject; but I should be disposed to think that as the question to be tried is one of title, the consequential relief should be calculated rather on the value of the land than upon a year or two's rent.

"But the point is new, not free from doubt, and likely to recur very frequently. I would, therefore, solicit the opinion of the Honorable Court on the following question: "Of what nature is the suit contemplated by s. 149 (3), Bengal Tenancy Act, and how should it be valued?"

"I should add that, although exception might perhaps be taken to Jagadamba Devi's plaint on the ground of mis-joinder, I have refrained from considering the point, as it is not directly before me?"

The opinions of the High Court (*Tottenham and Norris, JJ.*) were as follows:—

Tottenham, J.—The suit in question under s. 149 (3), Bengal Tenancy Act is not a title suit and need not be stamped as such. It is in the nature of a suit for an injunction under the Specific Relief Act or else of a declaratory suit.

Norris, J.—I agree that the suit in question is not a title suit. I do not think it is necessary to express any opinion as to what sort of suit it is.

Limitation :—For limitation of suits brought under sub-section (4), see article 109 of sch. 11 of the Indian Limitation Act.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(b) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant :

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a

decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

The old Act:—Section 102 of Act VIII of 1869 (B.C.) and section 153 of Act X of 1859 had: "Nothing in this Act contained shall be deemed to confer any power of appeal in any suit tried and decided by a District Judge, originally or in appeal, if the amount sued for, or the value of the property claimed, does not exceed one hundred rupees, in which suit a question of right to enhance, or vary the rent of a raiyat or tenant, or any question relating to title to land or to some interest in land as between parties having conflicting claims thereto has not been determined by the judgment."

Section 152 of Act X of 1859 amounted to:—

The latter enacted:—"In suits under clauses 2, 4, and 7 of section 23" (*i. e.*, suit for damages for illegal exactions of rent or abwabs, or for refusal of receipts, suits for arrears of rent and suits arising out of the power of distraint) "and under-section 24" (*i. e.*, suits by landlords against agents for money or accounts) "of this Act, tried and decided by a Collector, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, the judgment of the Collector shall be final and not open to revision or appeal except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a raiyat or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in sections 160 and 161 of this Act."

Interpretation:—In cases up to one hundred rupees, there will be a second appeal:

- (a) when there is a dispute as to the amount of yearly rental.
- (b) where the judgment has decided a question of title to land or interest in land as between adverse parties.
- (c) when the judgment has decided a question as to the right to enhance or vary the rent of a tenant.

(a) is a novel provision, (b) and (c) are reproduced from section 153 of Act X of 1859, and section 102 Act VIII of 1869 (B.C.)

But where the claim exceeds one hundred rupees, there will be a second appeal in all cases. But in both these cases, second appeal will lie to the High Court subject to the rules laid down in chapter XLII of the Code of Civil Procedure.

Suit:—The word "suit" in this section includes all proceedings prior or subsequent to a decree—*Kristo Chunder Chuckerbutty v. Anund Coomar Dutt*, 19 W. R., 307; *Kedarnath Biswas v. Huro Prosad Roy Chowdry*, 22 W. R., 207.

District and Additional Judge:—The expressions "District Judge, Additional Judge, or Subordinate Judge" are in accordance with the Full Bench decision of *Brojo Misser v. Alhadi Misrain*, 13 B. L. R., 376; 21 W. R. 320, as well as with the Civil Courts' Act. This Act gives a jurisdiction to try suits

according to the Code of Civil Procedure, except where it is otherwise provided by the Act, and this section has a qualifying effect and provides that there shall be no special appeal in rent suits under Rs. 100, except in certain circumstances—(Poorno Chunder Roy v. Kristo Chunder Singh, 23 W. R., 171.) In a later case it was doubted by Mr. Justice Jackson, if section 102 of Act VIII of 1869 (B.C.) took away the right of special appeal given by the Civil Procedure Code in such cases, and if the Bengal Council had authority to take away the powers of the High Court to entertain special appeals. The Full Bench, however, decided that in view of a long course of decisions, no second appeal will lie under section 102 except under the special circumstances mentioned therein—(Lungessur Koor v. Sookha Ojha, and Radhay Kishen v. Kali Misser, 1. L. R., 3 Cal., 151.) The objection of Mr. Justice Jackson does not hold water under the present law which makes the Civil Procedure expressly subject to the new provisions and which is an India Council Act.

Title to land as between parties having conflicting claims :—Where a case was decided solely on the want of a relationship of landlord and tenant between the parties, it was held that no special appeal lay to the High Court. It cannot be said that the tenant is a representative of a third party so as to make the decision in the suit one in respect of title to land as between parties having conflicting claims thereto—(Hurry Mohan Mazumdar v. Dwarkanath Sen, 18 W. R., 42; Shaik Dilbur v. Issur Chunder Roy, 21 W. R., 36; Kripa Moyi Debia v. Dropodi Chowdhraim, 24 W. R., 213.) When a landlord sues a person as tenant, who repudiates the tenancy, not denying the landlord's title, no appeal is given under this section—Ishan Chundra Ghosal v. Burnomoyee Dassi, 16 W. R., 233. In a suit for rent in which the defendant (raiya) sets up the title of a third person who is not made a party, the decision cannot be considered to be a binding decision in respect of title as between parties having conflicting claims to the land within the meaning of this section—(Kashee Ram Das v. Maharani Sham Mohini, 23 W. R., 227; Shaik Dilbur v. Issur Chunder Roy, 21 W. R., 36.) Where plaintiff claims rent as zemindar, and defendant, admitting his own tenancy, claims it as mortgagee, there cannot be said to be conflicting claims to, or some interest in land within the meaning of this section—(Raj Kishen Mukerji v. Peary Mohan Mukerji, 24 W. R., 114.) In a rent suit, where the judgment of the lower Appellate Court dismissing the plaintiff's appeal on the ground that plaintiff, as only a sharer, could not sue separately, shows that a question of title was not even considered, the decree in general terms could not be held to have determined it, and therefore under this section no special appeal lies—(Kureem Sheik v. Mokhoda Sundari Dassi, 23 W. R., 11, 268; 15 B. L. R., 111.) The circumstance that a question has been determined at the hearing of the appeal in a rent suit, by which an intervenor may be injuriously affected, will not make the appeal cognizable as a special appeal, unless the decision has involved some title or interest in land, of parties having conflicting claims thereto—(Raj Kishen Mukerji v. Sree Nath Dutt, 23 W. R., 408.) A and B, both of whom set up a claim to certain land, brought separate rent suits against the tenants. In none of these suits did the amount claimed exceed Rs. 100. Subsequently to the institution of the rent suits, A sued B to establish his title to the land in dispute. The District Judge, before whom the rent suits came on appeal, allowed them to stand over until the decision in the suit between A and B. That suit was decided in favor of B, and the Judge then decided the rent suits instituted by B in his favor, and dismissed the suits instituted by A. Held, that no second appeal would lie in rent suits, as no question of title between parties having conflicting claims

was decided in them. Held, also, that there was no such irregularity on the part of the District Judge, in the course which he pursued, of making his decision in the rent suits depend upon the decision in the suit to establish title, as would justify the Court interfering under section 622 of the Civil Procedure Code. Section 102 of Bengal Act VIII of 1869 (B.C.), was enacted in order to protect parties in the position of raiyat-defendants, and to prevent their being dragged up to the High Court in cases where the decree on demand is under Rs. 100. In such cases the decree is contended to have the same effect as that of a Small Cause Court—*Doorga Narain Sen v. Ram Lal Chuttur*, 1 L. R., 7 Cal., 330; *Rama Prosad Roy and others v. Shorup Paramanik*, 1 L. R., 8 Cal., 712. In a suit for rent in which the sum claimed was less than Rs. 100, the defendant pleaded that the plaintiff had ceased to have any interest in the land, and the suit was dismissed. There was no finding as between the plaintiff and any other person claiming title to the land: *Held*, that a special appeal to the High Court was barred by section 102, Act VIII of 1869 (B.C.)—(*Donzelle v. Tekan Nodaf*, 2 C. L. R., 558.) In a suit in ejectment valued under Rs. 100 the defendants, who were sued as yearly tenants, replied that their tenure was a *mourasi guzasta* tenure, and in proof of their allegation adduced evidence which was displaced by the plaintiff. The lower Courts considered that plaintiff's allegation was well founded. *Held*, that although the value of the suit was under Rs. 100, an appeal was not barred by the provisions of section 102 of Act VIII (B. C.) of 1869, as the lower Court had determined a question of law as to whether the tenure was *guzasta*—(*Byjnath Sahoo v. Ram Dhone Roy*, 7 C. L. R., 369.) Their Lordships of the Privy Council, in construing that section in *Amcer Hassan Khan v. Sheo Buksh*, 1 L. R., 11 Cal., 6, lay down the rule that, where a Court having jurisdiction decides wrongly, it cannot be said to exercise its jurisdiction “illegally or with material irregularity.” An appeal does not lie to the High Court from a decision of a District Judge staying execution in a suit for arrears of rent and for ejectment where the value of the amount decreed is less than Rs. 100. Nor can an application made

Ejectment.

to eject the tenant in his default to pay into Court the moneys due under the decree within the time fixed by section 52 of Bengal Act VIII of 1869, confer such right of appeal—(*Parbatty Churun Sen v. Shaik Mondari*, 1 L. R., 5 Cal., 594.) This decision was overruled by a Full Bench in *Tulsi Panday v. Lala Bachulal*, 12 C. L. R., 223; 1 L. R., 9 Cal., 596. The judgment of the Full Bench runs thus: “*Prima facie* in a suit of this kind, the appellant is entitled to a second appeal. The question is whether that right is taken away by section 102 of Act VIII of 1869 (B. C.) That section only applies where the amount sued for, or the value of the property claimed, does not exceed Rs. 100. In this case there is nothing to show that the value of the property claimed does not exceed Rs. 100; and unless that fact does appear, either from the finding of the lower Court, or elsewhere upon the proceedings, it seems to us that we have no right (more specially as we are empowered here to deal with points of law) to draw any inference to that effect. We are therefore of opinion that the Court has jurisdiction to entertain the appeal.” In suits instituted under Bengal Act I of 1879 for arrears of rent and ejectment on account of the non-payment of arrears of rent, a second appeal lies to the High Court; this class of cases not being within the provision of section 137 of the same Act—(*Ramjan Khan v. Raman Chamar*, 1 L. R., 10 Cal., 89.)

Enhancement and variation of rent:—Not only therefore in enhancement suits, but also in suits for commutation of rent or assessment of rent, a special appeal will lie. Because both of these modes will come under the provisions of variation of rent. Where, however the Collector has jurisdiction under

the Act, and he makes an assessment, under the rules prescribed by the Bengal Government, the Commissioners and the Board of Revenue will hear the appeal. A special appeal lies under this section in a suit in which the question of right to enhance has been determined—(Watson & Co. v. Ramdhun Ghose, 17 W. R., 496; Goluk Chunder Dutt v. Meah Raja Mijee, Id., 119.)

Amount of rent annually payable :—This section contemplates a second appeal where the amount of the rental is in question. It gives a very great latitude to second appeal. But a rent suit in which there is no dispute as to the amount of the jumma, and the only question is whether it is to be paid in instalments or in a lump sum, does not involve a question of right to enhance or vary the rent—(Peary Mohun Mukhopadhyaya v. Madhub Chunder Baboo, 23 W. R., 385.) This section, does not apply where the point decided is simply whether the rent fixed by a previous decision has been subsequently altered and a new arrangement come to between the parties—(Nurubdessur Persad Roy v. Shaik Gungah, 24 W. R., 49.)

Revision :—The power of revision conferred upon the District Judge is novel. The grammatical construction of the *proviso* would give the District Judge a power of revision whether the decree is passed in the first instance or in appeal; but it would be absurd to suppose that he could exercise such a power when the decree or order is passed by another District or Additional Judge. Hence the power would be limited to cases where the decree or order is passed by the Munsiff or Subordinate Judge.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

155. (1) A suit for the ejectment of a tenant, on the ground—
Relief against forfeiture.

(a) that he has used the land in a manner which renders it unfit for the purposes of tenancy, or

(b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

Vide sections 10, 25, 44, 66, 82 and 83 of the Act and notes.

Notice :—The Local Government has framed the following rule for the service of the landlord's notice on the tenant :—

"Section 155.—Notice to the tenant under this section shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court."

Breach or misuse :—So under the old law if the rent were paid within the time specified by section 52 the Court granted relief against a forfeiture—(*Dulichand v. Rajkissore*, I. L. R., 9 Cal., 88; 11 C. L. R., 389). The same principle was applied on equitable grounds to a *mokurari* lease where the covenant was that default of payment of rent will cause forfeiture—(*Mahomed Ameer v. Peryag Sing*, I. L. R., 7 Cal., 566; *Duli Chand v. Meher Chand*, I. L. R., 12 Cal., 439; *Mathura Mohun v. Ram Lal*, 4 C. L. R., 469; compare also *Brojendra Kumar v. Bungo Chunder*, 12 C. L. R., 389; *Golabalee v. Kootobollah*, I. L. R., 4 Cal., 527; compare 19 W. R., 349).

156. The following rules shall apply in the case of every raiyat ejected from a holding :—

Rights of ejected raiyats in respect of crops and land prepared for sowing.

(a) when the raiyat has, before the date of his ejection, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejection;

- (b) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;
- (c) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage.
- (d) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

This provision supersedes some of the recent decisions. So it was held at a sale for arrears of rent under section 66 of Bengal Act VIII of 1869, the growing crop standing on the land passes to the purchaser at the auction-sale, except when it has been specially excepted by the notification of sale, or a custom to the contrary has been proved—(*Afatoullah Sirdar v. Dwarkanath Moitry*, I. L. R., 4 Cal., 814). This provision is, however, consistent with the spirit of decisions in (*Jubraj Roy v. W. Mackenzie*, 5 C. L. R., 231, and *Juggut Chunder Roy alias Bashu Chunder Roy v. Rup Chand Chango*, I. L. R., 9 Cal., 48).

The effect of an order of ejectment under section 53 of Act VIII of 1869 (B.C.), is to dispossess the raiyats, not only of the land, but also of the crop standing thereon, the object of such an ejectment being to terminate completely the connection between the parties as landlord and tenant—(*In the matter of Durjan Mahton v. Wajid Hossein*, I. L. R., 5 Cal., 135).

“The obvious difference between sale and ejectment is this; when a raiyat holding is sold up he gets the money which includes the value of the crop on the ground. Why, when he was ejected, should he lose it? In regard to this point the Rent Commission said:—‘There are in the existing law no provisions as to the *away-going crop*; and, as a natural consequence, when a tenant is ejected while the crop is on the ground, the right to this crop is a constant source of dispute and litigation. We have enacted that when a raiyat is ejected in execution of a decree—and this we have just shown is the only way in which he can be ejected—and there are upon the land at the time of the ejectment growing crops or other ungathered products of the earth, which but for the ejectment such raiyat would have been entitled to reap or gather, such raiyat shall, notwithstanding such ejectment, be entitled to reap or gather such crops or products, and may use the land for the purpose of tending, reaping, gathering, and removing the same; and in the event of his doing so, he shall be liable to pay a reasonable sum for the use and occupation of the land for these purposes (section 80). We have, however, thought it reasonable to allow the landlord an option of taking such

crops or products at a reasonable valuation, if he gives notice of his intention to do so at the time when he applies for execution. If the landlord and tenant cannot agree as to the value of the crops or products, the Court may, upon the application of either of them, determine such value, and the order so determining such value shall have the force of a decree.' The principle seems to be a very sound one that the landlord should not by choosing his time for ejectment not only ruin his raiyat but should himself benefit by the crop in the ground which the raiyat has sown and which he is entitled to reap."—(The Hon'ble Sir Stuart Bayley in Council.)

157. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Power for Court to fix fair rent as alternative to ejectment.

158. (1) The Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, namely :—

Application to determine incidents of tenancy.

- (a) the situation, quantity, and boundaries of the land;
- (b) the name and description of the tenant thereof if any;
- (c) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure; and
- (d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

This section is useful to a landlord when he wants to have the incidents of a single tenancy determined. When he wants to have the incidents of a large number of tenancies in a local area settled, he has to proceed under section 108 *ante*. The provisions of this section are meant to be a substitute for those for interchange of pottahs and kabulyats of the former law. The Rent Commission observed :—" Closely connected with this point is the omission from the draft

Bill of any provisions similar to those of the existing law as to raiyats being entitled to pottahs, and landlords being entitled to kabulyats, and the procedure for enforcing the rights so declared. We have just observed that very little use has been made of these provisions by those for whose benefit they were intended. This observation was more particularly concerned with their use as a means of reducing to writing the conditions regulating the relation of landlord and tenant. There is, however, another purpose for which they might have been used, that is, as a means to obtain an authoritative settlement of some essential question connected with the tenancy and in dispute between the parties thereto—the rate of rent, for example, or the quantity of land held by the tenant. The landlord may contend that the raiyat holds twenty bighas of land, while the raiyat declares that he has but fifteen. Year after year the contention is renewed. The landlord threatens a measurement, which the raiyat, afraid of a venal *Amin* and a varying pole, desires to avoid. A bribe to the *gomastah* or compliance with some petty cess, defers the final settlement of the question for a year; and the following year it arises again, perhaps deterring the raiyat from going to his landlord's *kachari* to pay his rent, lest he should be subjected to a demand, the justice of which he will not admit. Or some fields in the raiyat's holding are by him maintained to be second class rice land and assessable with the prevailing or usual rate for land of this class, whilst the landlord avers that they are first class rice land and should pay a higher rent. At every rent day the point is discussed; and an amount of irritation is kept up which is not in harmony with the friendly relations which should exist between a landlord and his tenantry. It is very desirable that facility be afforded for the ready settlement of questions like these which are constantly arising in this country, more especially in consequence of the absence of boundaries and fences and the want of an exact survey upon an uniform standard. It might have been thought that the landlord, in the first case, could easily have the question settled by tendering a pottah and demanding a kabulyat for twenty bighas; and the landlord, in the second case, by tendering a pottah and demanding a kabulyat for the field as first class rice land: but if the land turned out to be nineteen and a half bighas instead of twenty, or one of the fields was found to be of some middle class kind of land, the suit, according to the decision of the highest tribunal in India, must fail, and the parties be sent away, the real question in dispute unsettled, and their feelings roused and embittered by litigation. Thus, these provisions of the existing law have become ineffectual for the only purpose for which the people cared to use them and found they might have been beneficially used. While omitting what has been found useless in practice, we have endeavoured to supply the want thus indicated by experience."

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

This chapter provides for sale of tenures or holdings in execution of decree, for arrears of rent of the same. If, however, a tenure or holding is sought to be sold in execution of decree for arrears of rent of some other tenure or holding, the decree-holder will have to proceed under the Civil Procedure Code, and this chapter shall not apply.

It is not quite correct to say that the provisions of this chapter do not apply to putni tenures. All that section 195 (e) *post* provides is that "nothing

in this Act shall affect any enactment relating to putni tenures, in so far as it relates to those tenures." Observe that the section does not say that nothing in this Act shall not *apply* to putni tenure, but that nothing shall *affect* the putni enactment—which obviously means to say that the provisions of this Act do not modify or alter or control the putni enactments; *e. g.*, the putni tenures still continue to be saleable under the special procedure, Reg. VIII of 1819, Regulation I of 1820 and Act VIII of 1865 (B.C.). But from this it does not follow the provisions of this Act do not apply to putni tenures. These provisions may apply to putni tenures, over and above the summary procedure of the putni enactments. For a similar construction under Act XV of 1877, see (*Golap Chand v. Kristo Chunder*, 1. L. R., 5 Cal., 314; *Khoselal v. Gunesb Dutt*, 1. L. R., 7 Cal., 690; *Niajbutulla v. Wajid Ali*, 10 C. L. R., 333; *Biharilal v. Mungola Nath*, 1. L. R., 5 Cal., 110).

Is the landlord decree-holder bound to sell the tenure or holding under this chapter, before proceeding against any other property?—This chapter provides for sales of tenures in respect of which the arrear was due; and section 65 provides that rent will be the first charge upon such tenure. The law in respect of a sale of tenure is therefore placed on equal footing with revenue sale law of the country; and sub-section (2) of section 143 of the Act provides that subject to its provisions, the Civil Procedure Code shall apply to all suits between landlord and tenant. We have seen also that an application for execution of a decree obtained in a suit has been held to be an application in the suit itself—(*Vide Bihary Lal v. Goburdhun Lal*, 1. L. R., 9 Cal., 446; *Mangul Prosad Dichit v. Grija Kant Lahiri*, 1. L. R., 8 Cal., 57).

The question, therefore, is whether the procedure of sale laid down in this chapter (XIV) is only a different mode of procedure from that given in the Civil Procedure Code? Or is this the only procedure that can be adopted in execution of a decree for rent of a tenure or holding? For the first view of the question it may be said that chapter XIV lays down rules for sales of tenures in execution of decrees for their arrears, and not for other proceedings that can be taken in execution of such decrees; that if the tenure or holding on account of whose rent the decree is obtained is sought to be sold by the landlord decree-holder, the procedure will be as laid down in this chapter, and the decree-holder will derive all the advantages of a sale under it but that he is quite welcome to proceed against other property or in any other way, if he chooses to do so, and that in such cases he shall have to proceed under the Civil Procedure Code. For the second view it may be argued that the Civil Procedure Code is subject to the provisions of this Act (sub-section (2) of section 143 *ante*), and that rent being the first charge at least upon an occupancy-holding or permanent tenure (section 65 *ante*), the decree for rent is like a mortgage decree or even higher than that, and the decree-holder cannot proceed against any other property or against the person of the tenant, until he first puts up the tenure or holding to sale. The analogy may further be extended by saying that as in case of arrears of revenue, the Government cannot go beyond the estate in the first instance, so the landlord cannot go beyond the tenure or holding at once. The question under the new Act is therefore not without difficulty. Under the old law it has been held that if a Court orders the sale of an estate in execution of a decree for rent against other landed property before proceeding against the tenure upon which the arrear accrued, a civil suit will lie to set aside such order—(*Jokee Lal v. Narsingh Narain Singh*, 4 W. R. (Act X) 5; compare *Byjnath Sahoo v. Lalla Seetul Prosad*, 10 W. R., F. B., 66). Under the constructions of sections 105 to 110 of Act X of 1859, Peacock, C.J., held that for arrears of rent of a saleable under-

tenure, the other immoveable property of the debtor cannot be attached in the first instance—(*Desaratullah v. Nawab Nazim Sidhi Nuzzur Ali Khan Bahadur*, 10 W. R., 341; 1 B. L. R., A. C., 217).

The learned Chief Justice observed: "Section 86, Act X of 1859 (section 57, Act VIII of 1869 (B.C.), and section 17, Act VI of 1862, B.C.) enacts that process of execution may be issued against either the person or property of the judgment-debtor; but the process shall not be issued simultaneously against both person and property. * * * Having laid down that general rule, section 109, Act X, (section 65, Act VIII of 1869, B.C.) enacts that in the execution of any decree for the payment of money under this Act, not being money due as arrears of rent of a saleable under-tenure, the judgment-creditor may apply for execution against any immoveable property belonging to his debtor, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the district in which the suit was instituted. * * * That section shows clearly that, as a general rule, process of execution for a money-decree under this Act is not to be levied in the first instance by attachment of immoveable property. The Legislature seems to have been anxious to guard against the sale of immoveable property in execution of decrees under the Rent Law, until the moveable property should have been first exhausted. Section 105 (section 59, Act VIII of 1869, B.C.) however forms an exception to that rule, and provides that under-tenures which by title-deeds or the custom of the country are transferable may be sold in the first instance for their own arrears. But then this section (section 61 of Act VIII of 1869, B.C.) provides that no order for the sale of any such under-tenure shall be made when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor, so long as such warrant remains in force; from which I infer that the Legislature considered that no other execution could be issued before the application to sell the under-tenure except an execution against the person or moveable property of the debtor. I can scarcely conceive that the Legislature, if they had considered that an attachment of the general immoveable property of the debtor might be made in the first instance, would not have provided that the under-tenure should not be sold so long as a warrant should remain in force against the other immoveable property, as well as when a warrant should remain in force against the moveable property. I therefore think that even for arrears of rent of a saleable under-tenure, the other immoveable property of the debtor cannot be attached in the first instance." In *Kristoram Roy v. Janokeenath Roy*, 1 L. R., 7 Cal., 748, it was held that the decision of *Desaratullah v. Nawab Nazim Nazar Ali Khan*, cited above, does not apply to sections 59 to 61 of Act VIII of 1869 (B.C.) Field, J., observed in this case: "Section 61 of Bengal Act VIII of 1869 enacts: 'If after sale of any such under-tenure in execution of such decree, any portion of the amount decreed remains due, process may be applied for and issued against any other property, moveable or immoveable, belonging to the debtor.' Now this is the first provision contained in the Act which allows execution to be taken out against immoveable property, and having regard to the point of time at which the judgment-creditor is here allowed to proceed against the debtor's immoveable property, it may well seem that it was not the intention of the Legislature to allow him to proceed against immoveable property until after the sale of the under-tenure. This was in fact the construction placed upon section 105 of Act X of 1859 by the decision to which I have just referred. But although, as I have said, the provision above quoted is the first specific provision in Bengal Act VIII of 1869, which allows process of execution to be taken out against immoveable property, there is another section in the Act which appears to have a very important bearing upon the question, i. e., section 34, which

enacts: 'Save as in this Act is otherwise provided, suits of every description brought for any cause of action arising under this Act, and all proceedings therein, shall be regulated by the Code of Civil Procedure.' The effect of the decision of their Lordships of the Privy Council in the case of Doolar Chand Sahoo v. Lalla Chabeel Chand, 3 C. L. R., 564, is, that that section extends to rent suits the provisions of the Code of Civil Procedure concerning execution and the property which may be taken in execution, and that the result of this extension is, that a judgment-creditor in a case, such as that with which I am now dealing, has the option of proceeding either against the under-tenure or against the other moveable or immoveable property of his judgment-debtor. In that case the question before their Lordships was whether what had been sold in execution of a rent decree was the under-tenure itself or merely the right, title, and interest of the judgment-debtor. Their Lordships refer to section 59 of Bengal Act VIII of 1869, and say: 'The Maharajah, if he had pleased was authorized to apply for the sale of the tenure.' They then quote the words of that section, and proceed as follows: 'It appears, therefore that although the Maharajah might, if he had pleased, have applied to sell the tenure in execution of his decree, he had also a power to proceed against other property of the defendant.' From this it appears to have been the opinion of their Lordships of the Privy Council that the effect of section 34 was, as I have already said, to give the judgment-creditor the option of proceeding to sell the under-tenure or proceeding against any other property of the judgment-debtor. It is deserving of notice that Sir Barnes Peacock, who was the Chief Justice of this Court, and who delivered the judgment in the case of Desaratullah, was one of the Lords of the Privy Council who heard the case to which I have just referred; and this fact is strong to show that the old law, as settled by Desaratullah's case, was not overlooked in putting a construction upon the new Act of 1869, which incorporated, by reference, the provisions of the Code of Civil Procedure. It therefore, appears to us that, as the law now stands, we must take it that the decision in the case quoted upon the old section 105 of Act X of 1859, is not applicable to sections 59 to 61 of Bengal Act III of 1869." Upon this case, I made the following remarks in my first edition: "With due deference to the learned Judges who decided this case, it ought to be observed that the decision is hardly correct and for these reasons: (1) the decision is against the express words of section 34 of Act VII of 1869 (B.C.) That section says: "*Save as in this Act otherwise provided*, all proceedings shall be regulated by the Civil Procedure Code," and section 61 of Act VIII of 1869 (B.C.) did, as a matter of fact, provide that other immoveable property cannot be sold before the tenure. The Civil Procedure Code was therefore subject to this provision; (2) the question mooted in this decision was not the subject of decision in Doolar Chand Sahoo v. Lal Chand Chabeel. That decision turned upon the wordings of the sale proclamation; (3) the passage quoted from the Privy Council judgment is at best an *obiter dictum*; (4) by the words "other property of the defendant in the passage quoted," their Lordships of the Privy Council might have meant only moveable property; (5) the fact that Sir Barnes Peacock was a Judge in Doolar Chand Sahoo and still did not say anything about Desaratullah's case, shows that it was not meant to be overruled. If their Lordships had intended such a thing, nothing was easier than to say so in so many words; and (6) even under Act VIII of 1869 (B.C.) it had been expressly held that under section 61 of Act VIII of 1869 (B.C.) the decree-holder is not entitled to proceed against immoveable property before proceeding against moveable property—(Hurrish Chunder Roy v. The Collector of Jessore, 1 L. R., 3 Cal., 712)." This opinion has been adopted in the recent case of Lalit Mohan v. Bisnodi Debi, 1 L. R., 14 Cal., 14. The judgment of the Court (Norris and Ghosh, J.J.)

was as follows: "Two questions have been raised before us by the learned Counsel for the appellant: 1st, that under the terms of the kabuliyat, creating the tenancy between the parties, the landlord is bound to sell the tenure itself in the first instance; 2nd, that under the provisions of the Rent Law (Bengal Act VIII of (1869) the decree-holder is not entitled to sell any other immoveable property before bringing to sale the tenure itself. * * *. The 2nd point is by no means free from difficulty under the provisions of Act X of 1859, there seems to have been no doubt that such a proceeding as the decree-holder now desires to adopt was unauthorized—see (*Dcsaratulla v. Nazim Nuzur Ali*, 1 B. L. R., A. C., 216, and *Jokee Lal v. Nursing Narain*, 4 W. R., Act X, 5). But then the question arises whether under Bengal Act VIII of 1869 it is authorized. The learned Government pleader who appeared for the decree-holder contended that, under Act VIII of 1869, the decree-holder was entitled to sell either the tenure or any other immoveable property as he pleased; and in support of his contention, he relies upon the decision of the Judicial Committee in the case of (*Doolar Chand Sahoo v. Lalla Chabil Chand*, L. R., 6 I. A. 47; 3 C. L. R., 561; and upon the case of *Kristo Ram Roy v. Janoki Nath Roy*, I. L. R., 7 Cal., 746), decided by a Divisional Bench of this Court. The Divisional Bench which decided that case has put a certain construction upon the above-mentioned decision of the Judicial Committee, and it is a construction which is certainly favourable to the decree-holder; and if we were prepared to adopt the same construction, there would be no difficulty in holding that the judgment-debtor's contention must fail. But we entertain doubts whether the result of the Judicial Committee's decision is what it has been held to be by the Divisional Bench. It will be observed from an examination of the case before the Privy Council that the only question that came before it for consideration was what passed under the sale held by the Court on the 15th of July 1872, whether it was the tenure or simply the right, title, and interest of the judgment-debtor therein; and their Lordships held that what the decree-holder intended to sell, and what was in fact sold by the Court, was not the former, but the latter. In arriving at this decision they referred, among other matters, to the petition of the decree-holder, and the inventory attached to it, describing the property which he requested to be sold, and also the provisions of sections 59 and 34 of Act VIII of 1869; and then they observed—"that although the Maharnjah (the decree-holder) could if he had pleased, have applied to sell the tenure in execution of his decree; he had also the power to prevent against the property of the judgment-debtor." The words "the property of the judgment-debtor" as used by the Judicial Committee in this passage, evidently refer to the property described in the decree-holder's petition and inventory, and were not used by them, as we understand, as denoting any property other than the tenure. And we are inclined to think that the question whether it was competent to the decree-holder to sell any other immoveable property than the tenure in the first instance, was not considered by the Judicial Committee, and that it is still an open question. Upon an examination of Bengal Act VIII of 1869, and comparing the several sections thereof, so far they bear upon the matter before us, with the corresponding section of Act X of 1859, it would appear that barring the provisions of section 34 of Act VIII of 1869, the law on the subject was substantially the same under both the Acts; and the question arises whether by reason of that section the decree-holder has the right that is now claimed for him. Section 34 of the Act runs as follows:—"Save as in this Act is otherwise provided, suits of every description brought for any cause of action, arising under this Act, and all proceedings therein, shall be regulated by the Code of Civil Procedure passed by the Governor-General in Council in relation to Civil Procedure as now are, or

from time to time may be in force; and all the provisions of said Act and of such other enactments shall apply to such suits. The matters for consideration upon this section are (1st) whether there is any provision in the Act itself regulating the order in which the under-tenure and other immoveable property belonging to the judgment-debtor should be sold; (2nd) whether the words "all proceedings therein shall be regulated by the Code of Civil Procedure" confer upon the decree-holder the right of electing to sell, in the first instance, the tenure, or any other property, as he pleases. Upon the two matters indicated above, we are of opinion that there is distinct provision in sections 59 to 61 and 65 of Act VIII of 1869 indicating that, in the case of a decree for rent accruing upon an under-tenure, the under-tenure should be sold in the first instance before any other immoveable property can be sold; and that, therefore, notwithstanding that it is optional with the decree-holder either to sell the whole tenure under the Rent Law, or simply the interest of the judgment-debtor, as it may exist upon the day of sale, under the Civil Procedure Code, he is bound to follow the order in which the property, upon which the rent has accrued, and other properties belonging to the tenant, may be brought to sale, as indicated in the above sections. In view of the opinion expressed by the Divisional Bench in the case referred to above, we should, had we considered the question raised in this appeal one of general importance and likely to recur, have thought it proper to refer this case to a Full Bench. But Act VIII of 1869 has been repealed, and an entirely new Act has come into operation, and so we think a reference to a Full Bench is necessary."

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests," but with power to annul the interests defined in this chapter as "incumbrances":

General powers of purchaser as to avoidance of incumbrances.

Provided as follows:

- (a) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;
- (b) the power to annul shall be exercisable only in manner by this chapter directed.

The old Acts.—Section 66 of Act VIII of 1869 (B.C.) and section 16 of Act VIII of 1865 (B.C.) prescribed: "The purchaser of an under-tenure under the provisions of sections 59 and 60 of this Act shall acquire it free of all incumbrances which may have accrued thereon by any Act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created, or by the subsequent written authority of the person who created it, his representatives or assignees, provided that nothing herein contained shall be held to entitle the purchaser to eject *khudkasht* raiyats or resident and hereditary cultivators, nor to cancel *bond fide* engagements made with raiyats or cultivators of the classes aforesaid by any holder of the under-tenure or his representative, except it be proved in a regular suit to be brought by such purchaser for the adjustment of his rent that a higher rate would have been demandable at the time such engagement was contracted

by his predecessor. Nothing in this section shall be held to apply to the purchaser of a tenure by the previous holder thereof, through whose fault the tenure was brought to sale." Section 64 of Act VIII of 1869 (B.C.) and section 108 of Act X of 1859 provided: "If a decree is given in favor of a sharer in a joint undivided estate, dependant taluk or other similar tenure, for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate, taluk or tenure, no order for the sale of such under-tenure in execution of such decree shall be made unless and until all moveable property (if any), which such judgment-debtor may possess within the jurisdiction of the Court in which the suit was instituted, shall have been seized and sold in execution of such decree, and sale of such property, if any, shall have proved insufficient to satisfy the judgment. In such case, such under-tenure, if of the nature described in section 59, may be seized and sold in execution of such decree, according to the ordinary procedure of the Court, and not in the manner provided in the said section, and every such sale shall have such and the same effect as the sale of any immoveable property sold in execution of a decree not being for arrears of rent payable in respect thereof."

The changes.—Thus while the old Act made only such tenures as are by title-deeds or custom of the country transferable subject to execution sale for arrears of rent, the new Act makes (1) all tenures saleable in execution of decrees for arrears of rent, and (2) not only the tenures but also holdings. But tenures or holdings are saleable in execution of decree for arrears of rent only; and not only for arrears of rent but the rent must be due in respect of the tenure or holding which is sold; they are not declared by this section saleable in all cases, and the purchaser at a sale for a money decree other than rent or for a rent-decree where the rent is not due in respect of the tenure or holding which is sought to be sold will not acquire under this section his tenure or holding free of all incumbrances. Moreover, while under the old law a distinction was made between the rent decree obtained in respect of an under-tenure by a shareholder and that by the sole owner, the new Act makes no such distinction; so that the purchaser at a sale in execution of a decree for rent obtained by a shareholder will acquire the tenure free of all incumbrances; observe also that this section contemplates the sale of the tenure or holding itself and not the right and interest of the judgment-debtor, the tenant.

Where a tenure or holding is sold.—It should be observed that what this section says is, 'where the *tenure or holding* is sold,' not where the judgment-debtor's right and interest are sold. So the tenure or holding is to be attached and advertised for sale (sections 163 and 164) and what the purchaser acquires is the tenure or holding (sections 163, 164, 165). The law on this subject is therefore the same as under the old law,—see (*Shyam Chand v. Brojonath*, F. B., 12 B. L. R., 21 W. R. 94; *Rash Bihari v. Peary Mohan*, I. L. R., 4 Cal., 346; *Jcolal Sing v. Gunga Parsad*, I. L. R., 10 Cal., 996; *Sanye Chunder v. Hurq Chunder*, I. L. R., 10 Cal., 496). See pp. 283—285. But where it was clear from the proceedings that what was sold was the interest of the judgment-debtor only, the sale was confined to that interest only and did not extend to the entire tenure.

In execution of a rent decree against one of several joint-holders of a tenure, when it is clear that what is sold, and intended to be sold, is the interest of the judgment-debtor, the sale must be confined to pass the right and interest of the judgment-debtor only. A and his three sisters were joint owners of a certain mouzah. In execution of a decree obtained against A, his right, title and interest in the mouzah was sold to B. The zeminder then brought a suit

under Act VIII (B.C.) of 1869 against A for arrears of rent in respect of the mouzah, and obtained a decree, in execution of which he applied not for a sale of the tenure, as he might have done under section 59 of that Act, but for "attachment and sale of the judgment-debtor's property." Upon this proclamations for sale were issued under Act VIII of 1859. The sale notification was headed "under section 246 of Act VIII of 1859," and notified the sale of the rights and interests only of the judgment-debtor. At this sale, C became the purchaser and was put in possession of the mouzah. Thereupon B the purchaser at the first execution sale, and a third person D who had meanwhile purchased the share of A's sisters, sued C for possession. It was held that B and D were entitled to possession, for that C had acquired nothing under his purchase—(*Doolar Chand Sahoo v. Lalla Chabeel Chund, and Lalla Bisshesvar Doyal*, 3 C. L. R., 561). So on the construction of a sale certificate and proclamation of sale purporting to be made under sections 59 and 60 of the Rent Act, it was held that what passed by the sale was not an under-tenure but merely the right and interest of the judgment-debtor therein. The declaratory portion of a sale proclamation is not by itself sufficient to override the description of the property in the body of the document—(*Dwarkanath v. Aloke Chunder Seal*, I. L. R., 9 Cal., 641).

A co-sharer selling a tenure or holding for his share of rent:—As we have already observed, this Act makes no distinction between a fractional co-sharer's rent and the rent due to all the co-sharers. Under section 65 both these rents are charges on the tenure or holding, and under section 159, the purchaser takes the tenure or holding sold in execution of a decree for arrears due in respect thereof, whether obtained by a co-sharer or the entire owner. It is doubtful, however, if the Act meant to overrule all the decisions under the old Act on this point, because the equitable considerations which render it improper that a co-sharer should be able to pass the whole tenure in execution sale of his decree for fractional rent still apply under the old law.

A sharer in a joint undivided estate, dependent taluk or other similar tenure, cannot cause the tenure itself to be sold in execution of a decree for his share of the rent; he can only sell the rights and interests of the tenant in such under-tenure, so far as his own share is concerned. The tenure will be sold under the ordinary procedure of the Court for the sale of immoveable property. Where a decree-holder is only a sharer in a joint undivided estate, and the property sold is a share in a gunttee tenure, the sale was declared to have taken place under this section, under which only the rights and interests of the defaulter can pass—(*Meertunjoy Chowdhry v. Khetternath Roy*, 5 W. R., (Act X), 71; *Nundolal Roy v. Gooroo Churn Bose*, 5 W. R., 6; *Gobind Chunder v. Ram Chunder*, 22 W. R., 421.) Where decrees for arrears of rent had been obtained by fractional share-holders in a tenure, and in execution thereof a moiety of the tenure had been sold, it appeared that the other moiety had been sold at the same time in execution of a mortgage decree against some of the judgment-debtors in the rent suits. On an objection being taken to the confirmation of such sale on the ground that the whole tenure should have been sold in execution of rent decrees, it was held that all that the decree-holders were entitled to have sold was the right, title, and interest of their judgment-debtors, and that they were in the position of ordinary creditors having no lien on the tenure; and that, consequently, the mortgagor being entitled to enforce his lien against the moiety covered by his mortgage, the sale of the remaining moiety in satisfaction of the rent decrees was a good sale, and could not be set aside—(*Mohendra Coomar v. Heera Mohan and Ishaneswari Dasi v. Gopal Das*, I. L. R., 7 Cal., 723.) A portion of a tenure cannot be the

subject of a sale under section 64, Bengal Act VIII of 1869, so as to give the purchaser the same privilege as he would acquire by the purchase of an entire tenure under sections 59 and 60. A landlord who was in receipt of a half share of the rent of a certain tenure caused that share of the tenure to be sold in execution of a decree for arrears of rent. After such sale A, the purchaser, took possession. Subsequently the tenant executed a mortgage, and a decree being obtained by the mortgagee the whole tenure was brought to sale in execution thereof and purchased by the mortgagee, who proceeded to oust A. In a suit by A to recover possession of his share of the tenure on the footing of his purchase, it was held that he could not make out a title to the half tenure with the privilege attaching to the purchase of an entire tenure under sections 59 and 60 of Bengal Act VIII of 1869, and that as it appeared that the mortgagor whose rights and interests only were thus sold, was only one of several co-sharers; in the absence of the co-sharers who were not parties to the suit, A was not entitled to the relief he sought—(*G. M. Reily v. Hur Chunder Ghose*, I. L. R., 9 Cal., 722), the recorded tenant of a *mourasi mokurari* tenure died leaving G his son and heir, who sold the tenure, which eventually came into the hands of the plaintiff's father, and afterwards on his death became vested in the plaintiffs, but neither they nor their father, though they made attempts to do so, ever obtained the registration of their names as tenants. R, one of the two share-holders in the zemindari, brought a suit for arrears of rent of the tenure against G, and in execution of the decree he obtained in that suit the tenure was sold and purchased by the other zemindar, by whom the plaintiffs were dispossessed. It was held that the plaintiffs were not precluded by the fact that their names were not registered as tenants, under section 26 of the Rent Act, from bringing a suit to recover possession of the tenure. The holder of the decree, in execution of which the tenure was sold, assuming him to be only a shareholder in the zemindari right, had no right under section 64 to sell the tenure, but only the interest of the person against whom the decree was passed. The onus was on the defendant to show that the sale under the decree for rent was of such a nature as to give him priority over the plaintiffs.—(*Kristo Chunder v. Rajkristo*, I. L. R., 12 Cal., 24; see also *Asbanulla Khan Bahadur v. Rajendra Chundra*, I. L. R., 12 Cal., 464).

Tenure cannot be resold a second time.—A tenure purchased in execution of a decree for the current rent due therefrom cannot be again resold for the arrears of rent which had accrued on account of arrears of former years. Those arrears become the personal debt of the former proprietor, and must be recovered from him. The tenure itself is hypothecated for the rent of the current year, and can only be sold for the rent of the current year—(*Musst. Lateefun v. Shaikh Meajan*, 6 W. R., 112.)

The Court remarked: "Those arrears (*i.e.*, for the previous years) became the personal debt of the former proprietor (*i.e.*, tenant), and must be recovered from him. The tenure itself is hypothecated for the rent of the current year, and can only be sold for arrears of the current year."

This decision was followed in *Paran Gour v. Hemanta Kumari*, I. L. R., 12 Cal. 597. But see sections 66 and 163 and 169 of this Act.

Effect of reversed or void decree on sale.—Where a plaintiff had obtained an *ex-parte* decree against a defendant, and in execution of that decree had sold the defendant's under-tenure, and this *ex-parte* decree was afterwards set aside, it was held that the sale was valid, though the decree under which it had taken place was invalid, and the defendant was not allowed to recover the under-tenure: unless he could prove that the purchase was not a *bonâ fide* one, and that

the purchaser was acting in collusion with the decree-holder—(*Jan Ali v. Jan Ali Chowdhry*, 1 B. L. R., 56; 10 W. R., 154). Peacock, C.J., in delivering judgment, referred to the case of *Chunder Kanta Surma v. Bissesvar Surma Chuckerbutty*, 7 W. R., 312, in which Norman, J., had made the following remarks: "It is important to observe that, if a sale takes place in execution of a decree in force and valid at the time of the sale, the property in the thing sold passes to the purchaser; and if the decree or judgment be afterwards reversed, the reversal does not affect the validity of the sale or the title of the purchaser." No suit will lie to set aside the sale of an estate in execution of a decree for arrears of rent at enhanced rates according to a prior decree obtained *ex-parte* for enhancement, subsequently reversed on special appeal. This case was decided under Act X of 1859, and Norman, J., says: "We think it clear that the lower Courts were right in dismissing the suit. The new plaintiff had his remedy under section 58 of Act X of 1859, to apply to set aside the judgment within 15 days after the process for enforcing the judgment was executed, if the story he now sets up is true. He might have paid the money into Court, or applied to stay the proceedings in the second suit pending the appeal in the first. He had no right to hold back and pay nothing, and having done so, he must take the consequence. As it is the decree became final, and the sale under it was perfectly regular. And although the defendant is not in the position of a purchaser without notice of the proceedings in the suit, we think he has a perfect valid title to the property he has bought"—(*Doorga Prosad Pal Chowdhry v. Jogesh Prokash Gungopadhyaya*, 4 W. R., (Act X), 38.) In another case, however, a contrary view was held by the Court, where Morgan, J., says: "On the reversal of the decree in execution of which the sale took place, the sale itself made while that decree under review fell"—(*Sheik Bhoollloo v. Ram Narain Mukerji*, Sp. W. R., 129). Where it appeared that the decree was barred by limitation, the sale in execution of such decree was declared invalid—(*Golam Asgar v. Lukhi Moni Deb*, 5 B. L. R., 68; 13 W. R., 273); so also when the original decree was passed without jurisdiction—(*Jadu Nath Kundu Chowdhry v. Braja Nath Kundu*, 6 B. L. R., Ap., 90).

With power to annul "incumbrances."—*Proviso (b)* speaks of the power to annul incumbrances. The sale itself, however, does not cancel the incumbrances but only gives the purchaser a power to do so, of which he may elect to avail himself, or which he may lose by not exercising—(*Gobind Chunder Bose v. Alimoddin*, 11 W. R., 160; *Modhoo Sudan Koondoo v. Ramdhun Ganguli*, 12 W. R., 383; 3 B. L. R., A. C., 431). Compare (*Ranee Surnomayee v. Sutish Chunder Roy*, 10 Moo. I. A., 123; 2 W. R., P. C., 14; *Khajah Assanoollah v. Obhoy Chunder Roy*, 13 Moo. I. A., 317; *Kazee Munshee Aftabodeen Mahomed v. Sanioolla*, 23 W. R., 245; *Rajah Suttia Sarun Ghosal v. Moresh Chunder Mitter*, 2 B. L. R., P. C., 30; 11 W. R., P. C., 10; *Tara Chand Dutt v. Musst. Wakenoonnissa Bibi*, 7 W. R., 91; *Koylash Chunder Dutt v. Jabur Ali*, 22 W. R., 29). In *Annoda Churam Das Biswas v. Mathura Nath Dass Biswas*, 1 L. R., 4 Cal., 860; 4 C. L. R., 6, a different view was entertained. The Court held in this case that under Bengal Act VIII of 1865, section 16, under-tenures become void *ipso facto* by the sale and are not merely voidable at the option of the purchaser. So in *Mohim Chunder Mazumdar v. Jotirmoy Ghose*, 4 C. L. R., 422). These two decisions have been virtually superseded by the Full Bench decision in the case of *Titu Bibi, Munsurunnissa Bibi, Ibrahim Mollah v. Mobes Chunder Bagchi*, 1 L. R., 9 Cal., 683; 12 C. L. R., 304.

160. The following shall be deemed to be protected interests within the meaning of this chapter:—

Protected interests.

(a) any under-tenure existing from the time of the Permanent Settlement;

- (b) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;
- (c) any lease of land whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning, or burying grounds have been made;
- (d) any right of occupancy;
- (e) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer;
- (f) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and
- (g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Upon the motion of the Hon'ble Baboo Peary Mohan Mukerji that clauses (c), (e) and (f) of this section should be omitted, the Hon'ble Sir Stuart Bayley said: "I wish to meet the Hon'ble Member on one point on which he spoke, but I would first point out that the protection to subordinate interests against which the Hon'ble Member protests is precisely the protection given in case of sales for arrears of Government revenue. I admit, however, that in regard to clause (c), though the danger of injury is such as may safely be overlooked, in regard to its bearing on Government revenue, yet the danger of seriously lessening the rent of the superior holder by protecting absolutely all interests created under clause (c) is not imaginary, and we ought, if possible, to safeguard the landlord against it. It can be met by an adaptation of section 13 of Bengal Act VII of 1868, and I propose therefore to insert a clause to that effect. It will be precisely the same as the section of the Bengal Act in a modified form so as to make it run with this chapter. It will come in after section 167 of the Bill. To this extent I am prepared to meet the Hon'ble Member's objection, but no further."

These "protected interests" have been mainly taken from the sale laws. Compare the notes given under section 6, pp. 67-68. Clauses (e), (g) and possibly (f) are additions. It should be recollected that all these interests are protected only against the purchaser, but they are not necessarily so against the landlord who puts up the tenure or holding to sale. Still clause (c) will imply that the making of dwelling houses, tanks, &c., are presumptive evidence of such tenures being permanent, and clause (f) will throw us back not to the fair and reasonable rent of the time when the question may arise, but to the fair and reasonable rent at the time when the right was conferred. It is necessary to consider clause (f) closely: of course occupancy right is protected under clause (d), which means that the occupancy raiyat will not be ousted by the purchaser, but are all occupancy raiyats entitled to hold as against an auction-purchaser at a sale under section 159, at a fair and reasonable rent? Clause (f) seems to

refer to occupancy rights conferred and not acquired. Possibly raiyats who have acquired occupancy rights under section 20 are protected by section 35. Suppose that an occupancy raiyat has made a manufactory upon his holding or a burning ground, and the tenure-holder under whom he holds is contemplating to oust him for these acts; in the meantime his landlord sells up his tenure for arrears of rent. The purchaser is restricted by clause (c) to proceed against the acts of the occupancy raiyat which could possibly be impeached by his predecessor. Now if the auction-purchaser cannot impeach these acts, presumably his predecessors could not. Hence the making of a manufactory, or dwelling houses, or burning ground is presumptive evidence of the tenure being permanent. The only remedy of the superior holder, therefore, would be to restrain the tenant from building a dwelling house or making a burning ground, &c.

Improvement on permanent structure :—In a suit to avoid an under-tenure by the purchasers at an auction sale for arrears of Government revenue, the defendants contended that the tenure was created prior to the Permanent Settlement, and that some portions of the land comprised in it were covered with permanent structures and improvements, and that, accordingly, it was protected under exceptions 1 and 4 to section 37 of Act XI of 1859, but the lower Court gave a decree to the plaintiff and annulled the under-tenure. Held by White, J., that, notwithstanding a party may fail to show that his tenure was created prior to the Permanent Settlement, yet he is entitled to the benefit of the 4th exception in respect of any permanent structure that may be upon his holding—(*Bhogo Bibi v. Ram Kanto Roy Chowdhry*, I. L. R., 3 Cal., 293; *Brojosundar Biswas v. Gourri Prosad Roy*, S. D. A., (1852) 645; *So Gobind Chunder v. Joy Chunder*, I. L. R., 12 Cal., 329.) The Court observed in this case :—“The first point for our consideration is, whether lands on which gardens have been made are protected by Act XI of 1859, sec. 37, from the effect of a sale for arrears of revenue, unless they have been expressly leased for that purpose. No doubt three successive Revenue Sale Laws, Reg. X of 1822, Act XII of 1841, and Act I of 1845, were to this effect, but the language of Act XI of 1859 is different, and is capable of the more liberal interpretation in favor of the tenant. This construction has been adopted by Birch and Mitter, JJ., in unreported special appeal, 1796 of 1876, *Sheik Joofail Ali v. Ram Kant Rai Chowdhuri*, and three appeals decided simultaneously, and also by White and Mitter, JJ., in the case of *Bhago Bibi v. Ram Kant Roy Chowdhuri*. We were at one time inclined to doubt the correctness of this opinion, but after examination of proceedings in the Legislative Council, we have come to the conclusion that the alteration in the terms of the law was deliberate, so as to protect all tenants coming within the terms specified.”

The benefit of clause (c) is limited to improvements effected *bond fide* and to permanent buildings erected before the sale; it does not extend to any thing subsequently constructed merely for the purpose of defeating the rights of the auction-purchaser. Subject to this reservation, it does not matter whether the improvements have been effected by the present holder or by some previous occupier (*Asgar Ali v. Asmat Ali*, I. L. R., 8 Cal., 110).

161. For the purposes of this chapter—

Meaning of “incumbrance” and “registered and notified incumbrance.”

(a) the term “incumbrance,” used with reference to a tenancy, means any lien, sub-tenancy, easement, or other right or interest created by the tenant on his tenure or holding, or in limitation of his own interest therein, and not being a

protected interest as defined in the last foregoing section;

- (b) the term "registered and notified incumbrance," used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

A mortgagee obtained a foreclosure decree on the 18th December 1854 against the heirs of the registered holder of a *mokurari istenwari* tenure, and was put into symbolical possession by the Court, but the decree was appealed against, and while the appeal was pending the zemindar sued the said heirs for arrears of rent due before the foreclosure decree, and sold under an *ex-parte* decree and appointed sezawals. The mortgagee had tendered the rent for December, which was refused, and he was told that no rent would be received until the sezawals were dismissed. The sale took place in April 1855, and in May 1855 the mortgagee applied to have his name registered, which application was refused. The zemindar had full notice of the mortgagee's title and proceedings. Under these circumstances the sale was set aside, apparently on the ground that the auction-purchaser could not, under the law then in force, avoid the mortgagee's title—(*Forbes v. Baboo Luchmapput Singh*, 10 B. L. R., 139; 14 Moore's I. A., 330). Before Act VIII of 1865 (B. C.), the lease must have expressly reserved the right of sale for arrears to entitle the purchaser to avoid incumbrances—(*Mohima Chundra Dey v. Goroo Dass Sein*, 7 W. R., 285; *Shahabuddin v. Fateh Ali*, B. L. R., Sup. Vol., 646; 7 W. R., 260; *Brindabun Chunder Chowdry v. Brindabun Chunder Sirkar Chowdry*, 8 W. R., 407; L. R., I. A., 178; *Satcowry Mitter v. Useemuddeen Sirdar*, S. D. A. (1851), 626; *Meherunnessa Bibi v. Harchurn Bose*, 10 W. R., 220; *Meer Jaseemuddin v. Shaikh Mansur Ali*, 6 B. L. R., Ap., 149; 15 W. R., 11). The law has, however, changed since the passing of Act VIII of 1865 (B. C.), and all incumbrances are now liable to cancelment by a sale in execution of arrears of rent. The right, title, and interest of A in a certain under-tenure was brought to a sale for rent obtained against him by B, and purchased by B himself. B at the time held another decree against A for arrears of rent of the same under-tenure. C, to whom A had previously mortgaged the under-tenure, thereupon having foreclosed the mortgage, instituted a suit for possession against A and B, and obtained a decree for possession. After this decree, but before C got actual possession, B caused the under-tenure to be sold in execution of his other decree against A, and again became himself the purchaser. C having shortly afterwards obtained possession under his decree was dispossessed by B, who took possession through the Court under his second purchase. C thereupon instituted proceedings under Act VIII of 1859, section 269, in which he was successful and regained possession. In a suit brought by B to set aside the proceedings and for adjudication of title: *Held*, that B had a good title to the under-tenure, and that he was not bound, before bringing the under-tenure to sale under his second decree, to give notice to C—(*Laidley v. Gunness Chunder Sahoo*, I. L. R., 4 Cal., 438. B held one-anna of ten-anna share purchased by B and H, and had paid rent to the kutkinadar on such one-anna share, and had his name registered as owner of such

one-anna share in the sherista of the kutkinadar. The kutkinadar having afterwards brought a suit against B and H alone for arrears of rent of the entire ten-annas, and having obtained a decree, and in execution of this decree put up to sale the entire ten-annas share: *Held*, that as the sale-certificate related only to the share of B and H, B's one-anna share did not pass under such sale—(Bhuggeruth Berah v. Moneeram Bauerji, I. L. R., 4 Cal., 855). At a sale of an under-tenure for arrears of rent under Act VIII of 1869, section 66, the growing crops standing on the land passes to the auction-purchaser, except when it has been specially excepted by the notification of sale, or a custom to the contrary has been proved—(Afatoollah Sirdar v. Dwarkanath Moitry, I. L. R., 4 Cal., 814.) The plaintiff purchased a mourasi taluk at a sale in execution of a decree obtained against the talukdar for arrears of rent, and then sued to recover possession of certain lands held by the defendants within the taluk. The defence was that the lands in question were held by the defendants, under a potta which had been granted to their ancestor, in 1733, by the then talukdars in respect of certain services to be performed by the grantees and their descendants. The Court of first instance found that the potta was genuine, and dismissed the plaintiff's suit. On appeal the Subordinate Judge found that the potta was a forgery; and that, although the lands had been granted to the defendant's ancestor in respect of service, yet the plaintiff was entitled to khas possession, as he did not require the services to be performed. He therefore decreed the plaintiff's claim. *Held* that the decree was right, for having found that the potta on which the defendants chiefly relied was a forgery, the Subordinate Judge was not bound, as a matter of law, to presume that the tenure was a permanent one merely from the fact of long possession of the lands—(Nobin Chunder Dutt v. Modun Mohan Pal, I. L. R., 7 Cal., 677). Where decrees for arrears of rent had been obtained by fractional shareholders in a tenure, and in execution thereof a moiety of the tenure had been sold, it appeared that the other moiety had been sold at the same time in execution of a mortgage decree against some of the judgment-debtors in the rent suits. On an objection being taken to the confirmation of such sale on the ground that the whole tenure should have been sold in execution of rent decrees, it was held that all the decree-holders were entitled to have sold was the right, title, and interest of their judgment-debtors, and that they were in the position of ordinary creditors having no lien on the tenure; and that, consequently, the mortgagor being entitled to enforce his lien against the moiety covered by his mortgage, the sale of the remaining moiety in satisfaction of the rent decrees was a good sale, and could not be set aside—(Mohendra Coomar Dutt v. Heera Mohan Coondoo and Ishanesvari Dassi v. Gopal Das Dutt, I. L. R., 7 Cal., 723). A person seeking to obtain the benefit of section 12, Bengal Act VII. of 1868, must give some *prima facie* evidence to show that the incumbrance which he seeks to avoid is an incumbrance falling within the terms of the section,—i. e., an incumbrance imposed on the tenure by some one who previously held it—(Kailash Bashini v. Goculmani, I. L. R., 8 Cal., 238; Durga Prosunno v. Kali Das, 9 C. L. R., 449; Gobindanath v. G. M. Reilly, I. L. R., 13 Cal., 1). The Court (Prinsep and Trevelyan, JJ.) remarked: "It seems to us that a purchaser of an under-tenure who seeks to enforce his rights under s. 66 of the Rent Act is bound to show that the person whom he seeks to eject holds under an incumbrance of the nature therein specified—an incumbrance that he is entitled to avoid. The law does not provide that he shall obtain the under-tenure free of all incumbrance, but only 'of incumbrances which may have accrued thereon by any holder of the said under-tenure' without special authority from his landlord. Consequently the plaintiff must start his case by showing that the title of the defendant so accrued."

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the pargana, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

Section 235 of the Civil Procedure Code provides: "The application for the execution of a decree shall be in writing verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain, in a tabular form, the following particulars (namely)—

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree;
- (f) whether any and what previous applications have been made for execution of the decree and with what result;
- (g) the amount of the debt or compensation, with the interest (if any), due upon the decree, or other relief granted thereby;
- (h) the amount of costs (if any) awarded;
- (i) the name of the person against whom the enforcement of the decree is sought; and
- (j) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require."

163. (1) Notwithstanding anything contained in the Code of Civil Procedure, when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code, announce—

- (a) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incum-

Order of attachment and proclamation of sale to be issued simultaneously.

brances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(b) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(3) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(4) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

Section 245 of the Civil Procedure Code provides: "The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237, and 238, as may be applicable to the case have been complied with, and if they have not been complied with, the Court may reject the application or may allow it to be amended then and there or within a time fixed by the Court. Every amendment made under this section shall be attested by the signature of the Judge.

"When the application is admitted, the Court shall enter in the register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application:

"Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made." For section 235 *vide* notes under section 162 *ante*.

Section 236 prescribes: "Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same."

Section 237: "Whenever application is made for the attachment of any immoveable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it, and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant and so far as he has been able to ascertain the same. Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints."

And section 238: "If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated

extract from the register of such office, specifying the persons registered proprietors of, or as possessing any transferable interest in the tenure or its revenue, was liable, pay revenue for such land and the shares of the registered proprietors."

Section 287 of the Civil Procedure Code provides: "When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale and shall specify as fairly and accurately as possible—

- (a) the property to be sold;
- (b) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or part of an estate paying revenue to Government;
- (c) any incumbrance to which the property is liable;
- (d) the amount for the recovery of which the sale is ordered; and
- (e) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

"For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto.

"The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may from time to time alter any rules so made. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a 'High Court' within the meaning of this paragraph.

"Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector."

Of which due notice will be given.—What is a due notice under this section? A fresh proclamation is contemplated under section 165. If the nazir at the time of the postponement gives notice of the next day of sale will that suffice?

The Local Government has directed that "the proclamation shall, in addition to the places prescribed in section 163 (3) of the Bengal Tenancy Act and in section 289 of the Code of Civil Procedure, be also published in the *Mal Kachari*, or rent office of the estate and at the local thana." (Notification, dated 20th February, 1886.)

Section 289 of the Civil Procedure Code provides: "The proclamation shall be made, in manner prescribed by section 274, on the spot where the property is attached, and a copy thereof shall then be fixed up in the Court-house, and in the case of land paying revenue to Government also in the Collector's office. If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale."

And section 274 says: "If the property be immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift or otherwise. The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a

copy of the order shall be fixed up in a conspicuous part of the property and of the Court-house. When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate."

See notes under section 174, *post*.

Section 290 of the Civil Procedure Code provides: "Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed up in the Court-house of the Judge ordering the sale."

164. (1) When a tenure or a holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

The *Rent Commission* observe in their report:—

"184. The principle borrowed from the revenue sale laws of making sub-leases and incumbrances voidable upon the sale of a tenure for arrears of rent sometimes works great hardship to innocent persons. It appears to a majority of us very desirable to prevent this hardship if possible; and we have devised certain means which we hope will successfully accomplish this object. We have provided (section 205) that when a tenure or under-tenure is notified for sale, the amount of the decree and costs may be paid into Court by any one who has an interest which would be endangered by the sale of such tenure or under-tenure free of incumbrances. The amount so paid may be recovered as money lent from the person in consequence of whose default to pay rent the tenure or under-tenure was notified for sale.

"185. The object of making sub-leases and incumbrances voidable upon the sale of a tenure for arrears of rent, is that the superior landlord's security for his rent may not be impaired.

"If the sub-leases and incumbrances of a tenure have not absorbed so much of the tenure-holder's profits as to render the interest left him insufficient to meet the rent which he pays to the proprietor of whom he holds his tenure; if the tenure, subject to these sub-leases and incumbrances will sell for a sum sufficient to satisfy any decree that can be passed for arrears of the rent payable by the tenure-holder—it cannot be said that the proprietor-landlord's security for his rent has been impaired so far as to bring the case within the above object. The right of sub-letting and creating incumbrances belongs to every tenure-holder—such is the common law of the country. So long as the landlord is certain of the rent to which he is entitled, he cannot justly complain of the exer-

cise of this right or claim to interfere with it. When, however, the exercise of the right extends so far as to endanger the landlord's rent, to impair the security for such rent afforded by the sale of the tenure by public auction, the case is altered, and the landlord may reasonably demand that these sub-leases and incumbrances be avoided, which have rendered the remaining interests of the tenure-holder an insufficient security for the rent payable by him.

"In this view of the matter, we have enacted (sections 203, 206) that a tenure, under-tenure or occupancy-holding, about to be sold in execution of a decree for arrears of its own rent, shall first be put to auction, subject to certain incumbrances, and, if the sum bid is sufficient to liquidate the amount of the decree and costs, shall be sold subject to such incumbrances. If the highest amount bid is not sufficient to liquidate the decree, the decree-holder, that is, the landlord, may then claim to have the tenure, &c., sold free of incumbrances. Such sale is not to be had immediately, but upon a subsequent sale-day not less than fifteen or more than thirty days afterwards; and a notification of such tenure being about to be offered for sale free of incumbrances must be posted up on some conspicuous place upon the land of the tenure. The effect of these provisions will be, that persons, who hold sub-leases and incumbrances, will not be endangered if the bidding on the first sale-day reaches an amount sufficient to satisfy the decree, and the tenure is in consequence sold subject to incumbrances. If, on the other hand, the bidding on the first sale-day does not reach an amount sufficient to satisfy the decree, such persons will have time to protect themselves from injury by paying in the amount of the decree (which they subsequently recover from the defaulter), and so preventing such a sale of the tenure as will avoid incumbrances.

"187. It has appeared to us that the superior landlord ought to have notice of the creation of the incumbrances to which the above protection is afforded, and that this protection ought not to be extended to all incumbrances indiscriminately. We have accomplished this by defining the term 'incumbrances' to mean and include every incumbrance, lien, sub-lease, or subordinate interest which the defaulting holder of the tenure, under-tenure or occupancy-holding was by law competent to create in derogation of his own interest, and which was created by an instrument in writing duly registered, a copy of such instrument being served upon the person to whom the rent of the tenure, under-tenure, or occupancy-holding is payable. This provision will, we trust, prevent fraud, if sought to be accomplished by setting up sham incumbrances after the sale. It will also enable an intending purchaser to ascertain the real value of property about to be sold, and he will probably bid more than if he was in a state of uncertainty on this point. We have provided for incumbrances created before the commencement of the Act by instruments in writing duly registered under the law applicable to them, by allowing a copy of any such instrument to be served within six months after the commencement of the Act. Mr. O'Kinealy would extend the same privilege to *unregistered* incumbrances created before the Act, which were not required to be registered by any law in force at the time of their execution; but a majority of us are apprehensive lest this might induce some persons to set up incumbrances fabricated for the purpose.

"With the exception of these registered incumbrances, of the creation of which the superior landlord has had notice, and which are protected in the case of a sale of the tenure subject to incumbrances, a purchaser will be entitled to avoid and annul all incumbrances imposed upon the tenure by any holder thereof, his representatives or assignees, unless in the case of incumbrances allowed by law, the right of creating the same was expressly granted by the written engagement under which the tenant was originally let into possession, or by the subse-

quent written authority of the person who let him into possession, or of the representatives or assignees of such person—(section 210). *Khudkasht* raiyats or resident and hereditary cultivators are not, however, liable to ejectment under this rule, nor can a purchaser cancel *bond fide* engagements made with them, unless he can show that a higher rent would have been fairly demandable at the time when such engagements were contracted: he may, however, proceed under the provisions of the Act to enhance the rents of all other raiyats. We have provided in accordance with a decision of the Privy Council, that the judgment-debtor himself, or any person acting in fraudulent collusion with him for the purpose of disencumbering the tenure, shall not be entitled to avoid incumbrances."

* The Rent Commission recommended that occupancy-holdings also should be first sold subject to registered and notified incumbrances. But that recommendation was modified, as the following from the Statement of Objects and Reasons shows Bill No. I:—"Among the objections to the scheme thus propounded by the Commissioners was one to the effect that it was unsuited to the case of occupancy-holdings. This objection is admitted* by Mr. Reynolds and by the Government of Bengal to be, as a rule, well-founded, inasmuch as an ordinary occupancy-holding is not likely to be saddled with incumbrances which should be respected at a sale. It appears, however, that there are, in some parts of the country, occupancy-holdings of large extent, the land of which is sub-let on such terms, that the interest of the lessee is of considerable value. Under these circumstances, the proper course appears to be that proposed by the Government of Bengal, namely, that occupancy-holdings should, as a rule, be sold at once with power to annul all incumbrances, but that the Local Government should have power to direct that the occupancy-holdings in any local area should be, in the first instance, put up subject to incumbrances as if they were tenures; and it is on these lines that the present Bill is drawn."

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

166. (1) When an occupancy-holding has been advertised

**Sale of occupancy-
holding with power to
avoid all incumbrances,
and effect thereof**

for sale under section 163, it shall be put up to auction and sold with power to avoid incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

See section 168.

167. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (c), the purchaser may, if he has power under this chapter to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

Vide notes under sections 159 and 161. It is a settled law that the effect of a sale is not *ipso facto* to annul and avoid incumbrances, but they are only voidable at the option of the purchaser which option should be exercised immediately. See notes under auction-purchaser, pages 68-71; 3 B. L. R., 431; I. L. R., 9 Cal., 683; 12 C. L. R., 304. *Vide* Art. 121 of the Limitation Act.

168. (1) The Local Government may, from time to time,

by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

169. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say :—

Rules for disposal of the sale-proceeds.

- (a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale ;
- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made ;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale ;
- (d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

If there are two co-sharers, being the landlords of the same tenure or holding; and both hold separate decrees against the tenant, but the tenure or holding is sold at the instance of one of them, is the other entitled to share in the proceeds of the sale? Clause (b) seems to give priority to the decree-holder at whose instance the sale took place so far as the amount of his decree is concerned. But still I should think that equitably the other's decree should have priority over the claim provided for in clause (c). The decision under sub-section (2) is per-

haps open to appeal but not open to a regular suit. The Bengal Tenancy Act possibly does not apply to houses or buildings, and therefore there is no priority of rent realised by the sale of house or building for which the rent was due—*Manik Lal Veno Lal v. Lakha*, I. L. R., 4 Bom., 429.

Section 295 of the Civil Procedure Code provides: "Whenever assets are realised by sale or otherwise in execution of a decree, and more persons than one have, prior to the realisation, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realisation, shall be divided rateably among all such persons:

Provided as follows:—

(a) When any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:

(b) When any property, liable to be sold in execution of a decree, is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold.

(c) When immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of the sale shall be applied—

First,—in defraying the expenses of the sale;

Secondly,—in discharging the interest and principal money due on the incumbrance;

Thirdly,—in discharging the interest and principal moneys due on subsequent incumbrances (if any); and

Fourthly,—rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government."

Read section 171, *post*.

170. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale may pay money into Court under this section.

Sub-section (1):—Sections 278 to 283 of the Code of Civil Procedure are concerned with claims to attached property and the disposal of such claims.

Sub-section (3):—But if in spite of such payment as contemplated in this sub-section the sale takes place and the zemindar had no notice of the depositor's right by purchase, the unregistered purchaser cannot avoid the sale—(*Mrityunjai Sirkar v. Gopal Chundra Sirkar*, 2 B. L. R., A. C., 131; 10 W. R., 466). *Per contra*, it has been held that a suit by an unregistered holder will lie in a Civil Court to set aside the sale of a tenure sold in execution of a decree for rent under Act X of 1859, after the money due upon the decree was deposited, section 151 of that Act notwithstanding (*Sheik Afzul Ali v. Lala Gurnarain*, 6 W. R., (Act X) 59). When the tenure of a tenant admittedly in possession is sold under section 105, Act X of 1859, he has no right to sue for the reversal of the sale; but when a party alleges that he is the tenant, and that the person, against whom the Act X suit was brought, was not the tenant in possession, he has a right to bring his action in the Civil Court to set aside the sale alleged to have been procured by fraud or to restrain the defendants from availing themselves of rights acquired by such sale—(*Gungadhur Dutt v. Ramnarain Ghose*, 7 W. R., 183). Where in a suit for arrears of rent of a transferable tenure to which a person claiming as mortgagee was no party, a decree for ejectment under section 78, Act X of 1859, was made instead of a decree for sale, it was held that the decree for ejectment could not confer upon the decree-holder (the purchaser in execution of a decree against the mortgagor) the right to avoid the mortgage by the ejectment of the mortgagor, and was no bar under section 2, Act VIII of 1859 to a suit by the mortgagee to question the validity of that decree, and to show that the Collector had no power to make a decree for ejectment—(*Tirbhun Sing v. Jhono Lal*, 18 W. R., 206). The same view was expressed in *Madho Prosad Sing v. Purshan Ram*, I. L. R., 4 Cal., 520. Where an under-tenure has been transferred, but the transfer is not registered in the *serishtah* of the zemindar or superior tenant, the transferee is nevertheless entitled as a person interested in the protection of the tenure to stop its sale in execution of a decree under Act VIII (B. C.) of 1865, by paying into Court the amount of the decree, though he is not entitled, unless the transfer is registered, to come in and allege that the person against whom the decree has been obtained was not the proprietor of the under-tenure, and was not in legal possession—(*Anund Lal Mookerji v. Kalika Persad Misser*, 20 W. R., 59). An under-tenant who has saved the superior tenure from sale by depositing the amount of rent due from the holder of that tenure to the zemindar, is not bound to apply to the Collector for immediate possession of the tenure thus preserved from sale, under clause 4, section 13, Regulation VIII of 1819, but is not competent to sue for the recovery of the amount without making any such application—

W. R., F. B., 7 B. L. R., App., 1.)
 F.B., 77; 7 B. L. R., App., 1.)
tenants.

171. (1) When any person having, in a tenure or holding

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.

advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

- (a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum and secured by a mortgage of the tenure or holding to him ;
 - (b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent ; and
 - (c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.
- (2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

The principle enunciated in this section seems to have been borrowed from clause (4), section 13, Reg. VIII of 1819.

The direction in section 13 of Reg. VIII of 1819, that money paid into Court by a talukdar in order to stay the final sale shall be deducted from any claim of rent that may at the time depending on account of the year or months for which the notice of sale may have been published, is satisfied by payment not into Court, but to the zemindar. If a strictly literal construction were put upon the words "into Court," no payment effectual to stay the sale could be made, for "the Court" has nothing to do with these sales, which are managed by the Collector—(*Tarince Debee v. Shamachurn*, I. L. R., 8 Cal., 954).

172. When a tenure or holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord ; and that landlord if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Inferior tenant paying into Court may deduct from rent.

In a suit by the purchaser of a patni against a durpatnidar for arrears of rent of the year 1285 (1878), it appeared that before the plaintiff's purchase the durpatnidar had paid the amount of arrears of patni rent for the year 1284 (1877), in order to save the patni from being sold under Regulation VIII of 1819, and that the amount so paid considerably exceeded the durpatni rent due at the date of suit: It was held that the defendant was entitled to deduct from

the rent claimed the amount paid under the Regulation in excess of the durpatni rent due up to the end of 1284—(*Nobogopal v. Srinath*, 1 L. R., 8 Cal., 877; 11 C. L. R., 37; *Lali Mohun v. Srinibash*, 1 L. R., 13 Cal., 331).

L and R, the holders of a patni estate, granted in 1856 a durpatni lease to S at an annual rent, the lease stipulating that S should have full power of sale and gift, but should sublet without the patnidar's consent. The case contained no stipulation for the registration of any vendee or donee. In 1860, S sold the durpatni lease to K, the deed of sale which was duly registered providing for mutation of names in the patnidar's books. No such mutation was ever effected by K, who was never recognized as their tenant by K and R, the rent of the durpatni being paid in the name of S. In 1864, the rent due from the putnidar being in arrear, the zemindar proceeded to sell the patni under Regulation VIII of 1819. Thereupon K, in order to protect his under-tenure, deposited in the Collectorate on 17th November 1864 a sum of money, on which the sale was stayed. K, being then in arrear in the payment of his durpatni rent, claimed to set off the amount deposited in the Collectorate against the rent due to L and R. This L and R refused to allow, and they brought a suit in the Collector's Court against S and his sureties to recover arrears of rent. In that suit K intervened claiming the benefit of the set-off, to which, however, the High Court, on the 26th June 1866 on appeal, held that he was not entitled, the deposit being merely a voluntary payment by K. On 30th October 1867 K brought a regular suit against S and L and R to recover the amount of the deposit and obtained a decree, but the decision was reversed on appeal and the suit dismissed for want of jurisdiction. On 6th June 1869 K filed his plaint in the proper Court. It was held that he was entitled to recover the amount deposited by him in the Collectorate, and that the suit was not barred as being *res judicata*, by the decision of the 26th June 1866—(*Lakhi Narain v. Khetra Pal*, 13 B. L. R., 146, P. C). This decision overrules (*Anund Chunder v. Soobul Chunder*, S. D. A., (1857) 1159); and (*Lukhi-narain Mitter v. Seetanath Ghose*, 6 W. R., (Act X) 8.) Compare (*Ambica Debi v. Pranhari Das*, 4 B. L. R., F. B., 77.)

173. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder

Decree-holder may bid at sale; judgment-debtor may not.

of a decree in execution of which a tenure or holding is sold under this chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

Compare 10 W. R., 220; 9 B. L. R., 220; 18 W. R., 240. *Vide notes under section 159. Defaulting tenant cannot himself purchase.*

174. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable under the decree with costs, and for payment to the purchaser, a sum equal to five per centum of the purchase-money.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside :

Provided that, if a judgment-debtor applies under section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section.

(3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this chapter.

Sales in execution of decree passed under the old Act :—See p. 19-23 *ante*. In *Lal Mohan v. Jogendra Chunder*, and *Banamali v. Ram Kali*, I. L. R., 14 Cal., 636, F. B., the Court held that the provision of an Act which creates a new right cannot, in the absence of express legislation or direct implication, have a retrospective effect, and that, accordingly, a judgment-debtor's right under section 174 of the Bengal Tenancy Act to set aside a sale did not avail where the sale was held in pursuance of a decree, the execution whereof had been applied for sale before that Act came into operation ; the facts of the cases were as follow :—

These proceedings arose out of applications made by certain judgment-debtors under the provisions of S. 174 of the Bengal Tenancy Act, to set aside some sales of tenures held in execution of decrees for arrears of rent.

In one of the cases execution proceedings up to sale proclamation were had before the Bengal Tenancy Act came into operation ; but the sale took place after that date. In the other case the decree was passed under Bengal Act VIII of 1869 ; but application for execution was not made until the Tenancy Act had come into operation. The Munsiff of Furriddpore and Alipore, before whom the applications were respectively made, granted the application and set aside the sales in conformity with the provisions of section 174 of the Act.

The opposite parties in each case applied for and obtained rules in the High Court. The rules were argued before Prinsep and Beverley, JJ., who made the following reference to a Full Bench :—

“ These rules arise out of proceedings taken under S. 174 of the Bengal Tenancy Act, in which sales of tenures held in execution of decrees for arrears of rent have been set aside at the instance of the judgment-debtor. In both cases the decree was made while Bengal Tenancy Act VIII of 1869 was still in force, but the sale actually took place after the 1st November 1885, on which date the Bengal Tenancy Act came into force. But there is this difference between the two cases. In one case execution was applied for, and the sale proclamation was issued under Bengal Act VIII of 1869, whereas in the other application for exe-

cution was made after the Bengal Tenancy Act came into force. The question is whether in either or both of these cases the provisions of S. 174 of the Bengal Tenancy Act are applicable. As the question is an important one, and as we understand that the matter is before the Court in several other cases, we think that the point should be referred to a Full Bench for decision. On the one hand it is contended that proceedings in execution are proceedings in the suit, and that the sales must, therefore, be considered to be sales under Bengal Act VIII of 1869 and not under the Bengal Tenancy Act, and that the provisions of S. 174 will not apply to such sales. It is further urged that S. 174 is only one of several sections contained in chapter XIV of the Bengal Tenancy Act, many of which sections are expressly made applicable to sales under this chapter only. It is argued, therefore, that S. 174 will not apply in cases other than those in which the application and attachment have been made under sections 162 and 163. On the other hand it is contended on the authority of the Full Bench decision in the case of—(*Bhobo Sundari Debi v. Rakhai Chunder Bose*, I. L. R., 12 Cal., 583) that the Bengal Tenancy Act must be held to have retrospective effect in matters of procedure, so far that its provisions will be applicable to proceedings commenced before the Act came into force. In reply to this, it is argued that the section in question confers a new right on the judgment-debtor and takes away an already existing right from the auction-purchaser, and that, therefore, upon the authority of the very case cited, the Act ought not to be allowed to have retrospective effect. Section 6 of the General Clauses Act (1 of 1868) is also relied on. Two other cases were referred to in the course of the argument. One of these is in the matter of the petition of Mulo, I. L. R., 2 All., 299, in which it was held that an application under S. 315 of Act X of 1877 could be entertained in respect of sales held under the former Code (Act VIII of 1859) although no similar provision was contained in that Code. The other case referred to was that of—(*Hurro Sundari Debi v. Bhojohari Das Manji*, I. L. R., 13 Cal., 86) in which it was held that where the repealing Act gave a right of appeal which did not exist under the Act repealed, no appeal would lie against a decree made before the passing of the repealing Act. The question, then, that we propose to refer to the Full Bench is this: "Whether an application under s. 174 of the Bengal Tenancy Act can be entertained in respect of sales held in execution of decrees made before the passing of the Act (a) when execution of the decree was applied for before the passing of the Act (b) when execution of the decree was applied for after the passing of the Act."

Before the Full Bench Rule No. 1401 was compromised. The judgment of the Court (Mitter, Prinsep, Wilson, Tottenham, and Norris, JJ.) was as follows:— "We are of opinion that an application under section 174 of the Bengal Tenancy Act cannot be entertained in respect of sales held in execution of decrees made before the date when the Act came into operation, the execution of the decree having been applied for before the aforesaid date. Section 174 of the Bengal Tenancy Act confers upon the judgment-debtors a new right which they did not possess under the old Act. Therefore the presumption is (in the absence of express legislation or direct implications to the contrary) that its operation is not intended to be retrospective. Its provisions cannot, therefore, be applied to proceedings commenced before the Act came into operation." Prinsep, J. observed:—As one of the Judges who referred this case, I think it necessary to state that it was referred as cognate to another case already referred in which the point raised was one of some difficulty and importance, so as to secure uniformity of practice. It is much to be regretted that the parties have since compromised that case and thus prevented the settlement of this matter.

Deposit:—In *I. L. R.*, 14 Cal., 321 it was held that the deposit under section 174 of the Tenancy Act must be of such a nature as to be at once payable to the parties, and a Court has no power to set aside a sale under that section unless the judgment-debtor has complied strictly with its provisions.

The References:—Section 311 of the Civil Procedure Code provides: "The decree-holder or any person whose immoveable property has been sold under this chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it; but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity."

So section 312: "If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser. If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale. No suit to set aside, on the ground of such irregularity, an order passed under this section shall be brought by the party against whom such order has been made."

So section 313: "The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court may make such order as it thinks fit: provided that no order to set aside a sale shall be made, unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order."

And section 314: "No sale of immoveable property shall become absolute until it has been confirmed by the Court."

So section 315: "When a sale of immoveable property is set aside under section 312 or 313, or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold, and the purchaser is for that reason deprived of it, the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid. The repayment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money."

The procedure to be followed upon the sale of an under-tenure is that prescribed by the Civil Procedure Code. Section 311 does not apply only to sales made under Chapter XIX of the Code, and the sale of an under-tenure may be set aside upon any of the grounds mentioned in that section—(*Azizoonnessa Khatoon v. Garo Chand Dass*, *I. L. R.*, 7 Cal., 163). The object of notice of sale for arrears of rent (sub-section (3) of section 163, *ante*) is to give information, not merely to the parties wishing to purchase, but to the defaulter; and if the notice is not stuck up in the manner prescribed by law, it is open to the defaulter to plead that he has been endamaged and the sale becomes illegal—(*Raghub Chunder Banerji v. Brojonath Koondoo Chowdry*, 14 W. R., 489). The fact of no notice having been served in the mofussil is sufficient ground for setting aside a sale for arrears of rent—(*Nugendra Chunder Ghosh v. Musruff Bibi*, 15 W. R., 17). Where a misstatement in the notice produces a mistake, and the property is consequently sold at an inadequate price, the judgment-debtor is entitled to have the sale reversed—(*Khodeja Bibi v. Moonshee Johad Raheem*, 14 W. R., 320). In the case of a sale of a piece of land upon which there was no town or village of any kind, and the peon stuck up the notice in the Court-house, and also at

the sadar kutchery of the zemindar, and obtained the receipt of the defaulter in the latter place, he was held to have carried out substantially, as far as he could, the provisions of the law regarding notice—(*Hurry Kisto Roy v. Muteelal Nundi*, 14 W. R., 36). Where a tenure is duly sold for arrears of rent, the absence of a shareholder's name from the proceeding does not, as a matter of law, invalidate the sale against him—(*Durbejoy Mahaton v. Prithee Narain Singh*, 14 W. R., 30.) Where six tenures with separate recorded jummas were lumped together and sold in execution of decree as one lot, whereby the plaintiff and his co-sharers were precluded from buying up any one or more of the six tenures, and no description of the properties to be sold was given either in the sale proclamation or lutbundi, in consequence of which the defendant was apparently the only bidder, and he purchased the six tenures at an inadequate price, the sale was reversed as fraudulent and illegal—(*Srikant Das v. Ramjeebun Roy*, 18 W. R., 342). Where an estate has been sold at auction for less than its market value, the judgment-debtor is not entitled to have the sale set aside, unless he can show that such inadequate price has been directly and presumably the result of the irregularity of which he complains—(*Habeeshul Hossein v. Allender*, 14 W. R., 44). The market value of the property is not the value which ought to be taken as the standard at an auction sale in execution of a decree—(*Meah Khan v. Narain Chunder Chowdry*, 18 W. R., 197; *Huro Narain Sahoo v. Girdharee Sing*, 19 W. R., 227).

"We have, at the suggestion of our Honourable colleague Baboo Peary Mohan Mukerjee, inserted a new section (174) allowing a judgment-debtor to apply to set aside a sale of his tenure or holding on depositing in Court within thirty days from the date of sale for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to 5 per cent. of the purchase-money. Applications under section 311 of the Code of Civil Procedure to set aside sales cause expense and annoyance to the decree-holder and auction-purchaser. It is believed that they are often instituted merely with a view to recovering the tenure or holding which had been sold, and it is anticipated that if a judgment-debtor is allowed to recover his property by depositing after the sale the amount decreed against him, the number of these applications will be considerably diminished."—*Select Committee's Report*.

175. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by

Registration of certain instruments creating incumbrances.

Notification of incumbrances to landlord.

him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

Power to create incumbrances not extended.

CHAPTER XV.

CONTRACT AND CUSTOM.

178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

Restrictions on exclusion of Act by agreement.

- (a) shall bar in perpetuity the acquisition of an occupancy-right in land, or
- (b) shall take away an occupancy-right in existence at the date of the contract, or
- (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or
- (d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act, shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

- (a) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;
- (b) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;
- (c) take away the right of a raiyat to surrender his holding in accordance with section 86;
- (d) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;
- (e) take away the right of an occupancy-raiyat to sub-let subject to and in accordance with the provisions of this Act;

- (f) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52 ;
- (g) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40 ; or
- (h) affect the provisions of section 67 relating to interest payable on arrears of rent :

Provided as follows :—

- (i) nothing in this section shall affect the terms or conditions of a lease granted *bona fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right ;
- (ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat ;
- (iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of orchard land with agricultural crops.

Sub-section (1), Clause, (a)—The words *before or after the passing of this Act* should be carefully noted. The Legislature evidently contemplates to give this sub-section a retrospective effect, otherwise what would be the force of the word “before.” Clause (a) is rather ambiguous, for if the words “in perpetuity” mean “ever,” both sub-section (2) and clause (a) of sub-section (3) will be redundant, because, cases falling under them would be included by clause (a). The only feasible distinction between these provisions, therefore, is this: *Before the passing of the Act*, if there was a contract between a landlord and his tenant that no length of possession should ever confer an occupancy-right, such a contract would be void under clause (a) sub-section (1), but if the contract was for a limited period, e. g., for 12 or 14 or 20 years, and the agreement was that by an occupation for this period, no occupancy right will grow, such a contract would be valid [clause (a) of sub-section (1)]. If, however, such a contract was made between the 15th July 1880 and 14th March 1885, it would be void under sub-section (2). Then *since the passing of the Act*, if there was a contract between a landlord and his tenant that no length of possession should ever confer an occupancy right, that contract would be void under clause (a) of sub-section (1); and if the contract was for a limited period, the agreement being that by possession during that period no occupancy right will accrue, that agreement would be void under clause (a) of sub-section (2). This explanation, though with difficulty, saves us from a confusion of ideas, makes the provision clause (a) of sub-section (1) altogether futile so far as it bears upon the

retrospective relation of landlord and tenant; because as a matter of fact before 15th July 1880, if there was any contract between landlord and tenant barring the acquisition of an occupancy right, it had reference to the limited period for which the tenant held. There is another way of reading these provisions: If we understand by the words 'in perpetuity,' 'ever,' clause (a) may be read as a general provision that no contract before or after the passing of the Act shall ever bar the acquisition of an occupancy right; and then sub-section (2) and sub-section (3) clause (a), provide that no contract will bar the acquisition of such right *under the Act*, as for instance, when fresh lands are acquired by an occupancy-raiyat, under section 21 *ante*, he will acquire a right of occupancy in it at once, and under sub-section (2) and sub-section (3) clause (a) of this section, no contract barring the acquisition of an occupancy right in the fresh land will be valid.

*Sub-section (1), Clause (b) :—*Read with sub-section (1), this clause would seem to mean that if a raiyat has contracted himself out of his occupancy right under the old law, his right is not extinguished, and unless barred by the law of limitation he can recover that right.

"We all know the theory on which the ordinary law of contract is based. It presupposes equality between the parties to the contract, full knowledge and appreciation by each party of the nature of the rights to which he is entitled, and a deliberate intention on either side to modify those rights in a particular manner. Gaius and Titius, or Ram Dass and Ram Bux, meet in the marketplace and strike a bargain, and when they have done so, the Courts hold them to their bargain. But the circumstances which lead up to the execution of a kabuliyat by an occupancy-raiyat are of a very different character. The raiyat's ordinary rights, the rights with which a kabuliyat purports to deal, are not based on contract, and the whole notion of their being capable of regulation by contract is unfamiliar to him. His rights are based on occupation and regulated by custom. He did not come in under a lease by which the landlord agreed to let and the tenant agreed to take a specified piece of land, for a specified term, under specified conditions; and if any instrument purporting to be such a lease can be produced against him, it is usually a fiction. He simply occupies the land, as his forefathers have occupied it before him, subject to the observance of certain conditions, the general character of which is approximately known and understood, though they have never been reduced to a definite written form. There is a nebulous border-land between his rights and those of the zemindar, which has, from time immemorial, been the subject of dispute between them, and with respect to which the contest is under ordinary circumstances not unequally waged between persistent worry on the one side and passive resistance on the other. But there are certain central rights which we know very well that the raiyat would not give up except under the pressure of absolute necessity—rights which are essential to his status; and if we found that he has attached his signature or mark to a kabuliyat purporting to give away these rights, we may feel morally certain that the signature has been obtained under circumstances which are described in the Indian Contract Act as constituting undue influence. In fact, whilst the elements of an ordinary legal contract are offered on the one hand and accepted on the other, the characteristic elements of the transaction which results in the execution of such kabuliyats as these, are pressure on the one side and submission on the other. It is the execution of instruments of this nature that we wish to prevent. We desire to prevent the occupancy-raiyat from contracting or appearing to contract himself out of rights which are essential to his status. We have no desire to make this section more stringent or more comprehensive than the nature of the

case requires, and if it can be shown that any of its provisions can be relaxed or modified without any serious risk of allowing the main objects of our legislation to be defeated, I should be most ready to accept the modification."—(*The Hon'ble Mr. Ilbert, Debate of Council.*)

Sub-section (1), Clause (d):—No contract made before the passing of the Act shall take away or limit the right of a tenant as provided by this Act to make improvements and claim compensation for them. The effect of this provision is, that if there is such a contract, it is extinguished with the passing of the Act. When, however, there was no contract one way or other, this provision will not give the tenant a right to claim compensation retrospectively; and a tenant who has made an improvement before the Act came into force will not get the advantages of the Act.

Sub-section (2):—The 15th July 1880 was the date of the orders of the Government of Bengal making public the Report of the Rent Commission. *Vide* notes under clause (a) of sub-section (1).

Sub-section (3), Clause (a):—*Vide* notes under clause (a) of sub-section (1) of this section.

Sub-section (3), Clause (b):—*Vide* notes under section 23.

Sub-section (3), Clause (c):—*Vide* notes under section 86.

Sub-section (3), Clause (d):—*Vide* notes pp. 123, 128, and 278. In I. L. R., 5 All., 121 it was held that an hypothecation by an occupancy-tenant of his right of occupancy was not a "transfer" within the meaning of section 9 of the N. W. P. Rent Act, 1873. In I. L. R., 4 All., 371 it was held that a landholder, who had attached the occupancy right of an occupancy-tenant in certain land in execution of a decree before Act XII of 1881 came into force, was not entitled under section 2 of that Act to bring such right to sale after that Act came into force, that section not saving the right of a landholder to bring such a right to sale in execution of a decree, and section 9 of that Act expressly prohibiting the sale of such a right in execution of a decree. In *Devi Prosad v. Haridoyal*, I. L. R., 7 All., 601 an occupancy-tenant made a usufructuary mortgage of his holding and afterwards had the land and the mortgage deed returned to him, and the mortgage was cancelled. Subsequently, the landlord instituted a suit for ejectment, on the ground that by the mortgage the tenant had committed an act inconsistent with the purpose for which the land was let, within the meaning of Act XII of 1881 (N. W. P. Rent Act) section 93 (b). Justice Oldfield held that, apart from the question whether executing a mortgage of his holding was an act within the meaning of section 93 (b) of the Rent Act the mortgage having been cancelled, there was no cause of action left, and the penalty should not be enforced, with reference to section 149. Justice Mahmood held that the occupancy tenure could not be brought to an end except on grounds clearly provided by the law; and the execution of the mortgage, though illegal and void, was not "any act or omission detrimental to the land" or "inconsistent with the purpose for which the land was let" within the meaning of section 93 (b) of the Rent Act and furnished no ground for ejectment.

In *Gopal Panday v. Parsotam Das*, I. L. R., 5 All., 121, Justice Mahmood observed: "Whatever the rights of tenants may originally have been in these Provinces, Act X of 1859 was the first legislative enactment which recognized "or confined the right of occupancy upon cultivators who had occupied their holdings for 12 years and upwards. Section 6 of that Act virtually declared the right to be heritable, but left the question of transferability of the tenure unprovided for. It was held by a Full Bench of the Calcutta High Court

"that the right was not transferable, that it was a right to be enjoyed by the person who held or cultivated and paid rent and had done so for a period of 12 years, that the right was only to be in the person who had occupied for 12 years and was not intended to give any right of property which could be transferred—(Narendra Narain Roy Choudhuri v. Ishan Chunder Sen, 13 B. L. R., 288). The same view was taken by justice Phear, in the case of Bibi Sohodwa, 12 B. L. R., 82. That learned judge, in examining the nature of the right of occupancy, compared it to the relation which obtains between the right of ownership of land in England and the servitudo or easement which is termed *profit à prendre*. He further observed that the raiyat's was the dominant and the zemindar's the servient right; that whatever the raiyat had, the zemindar had all the rest which was necessary to complete ownership of the land; that the latter must, therefore, have such a right as would enable him to keep the possession of the soil in those persons who are entitled to it and to prevent it from being invaded by those who are not entitled to it.

"It was held by this Court and the Calcutta High Court, that local custom would entitle the occupancy-tenant to transfer his holding; in other words, the question of transferability was to be determined with reference to the original nature of the tenure, irrespective of the statutory provisions which were not understood to deprive tenants of such customary or other rights as they possessed before the passing of Act X of 1859. The status of occupancy-tenants was, therefore, variable and indefinite, and being thus involved in uncertainty was liable to create the mischief which arises from imposing upon the Courts, charged with deciding such suits, the duty of ascertaining local custom in every case in which the tenant chose to plead it—customs which in India are far from being fixed or easily ascertainable.

"Such was the state of things found by the legislature in 1873 when the Rent Act of that year was passed. The preamble of that Act shows that its objects were of a wider scope than those with which Act X of 1859 was enacted. The object of the Act of 1873 was not only to consolidate, but to amend, the law relating to the recovery of rent in these Provinces. It is therefore with reference to the provisions of that Act which are more specific and clear, that the nature of the right of occupancy should be determined, and it is to be observed that the question of transferability is no longer left unprovided for by the Legislature.

"The manner in which the right of occupancy comes into existence is described in section 8 of the Act. The right is acquired by the tenant merely in virtue of occupying or cultivating land continually for 12 years; in computing the period the occupation or cultivation by the father or other person from whom the tenant inherits is also taken into cultivation; and the whole rule is subject to certain provisos. The right which thus comes into existence confers definite benefits on the tenant. He ceases to be a tenant-at-will; the rent payable by him cannot be enhanced by the mere wish of the landlord (section 12) without special grounds (section 13); he can apply for abatement of rent on showing adequate grounds (section 15); the entire question of the amount of rent no longer remains a matter of discretion with the landlord, but is regulated by definite rules (sections 16 and 17), though the landlord and tenant can, by mutual agreement, fix such amount (section 22) for such term as may be agreed upon. Further, the tenant can claim a lease from the landlord at the rates paid by him (section 26); he cannot be ejected except on the ground of the non-payment of arrears of rent and other definite grounds specified in the Act. In short, while the landlord still continues to be the owner of the land, the tenant acquires a right to occupy and cultivate the soil wholly

"irrespective of the assent or permission of the landlord, so long as the provisions of the Act are conformed to.

"Now these statutory provisions, which on the face of them appear to relate only to the province of Procedure or adjective law on the subject of recovery of rent have, in reality, the effect of creating a substantive right in favor of the tenant. It has been said that the nature of that right is only a personal one because, as is contended, it belongs to the tenant personally, and dies with him. This contention is no doubt in a measure supported by the view expressed by Couch, C. J., in the Full Bench ruling in the case of Narendranath Roy Choudhuri, 13 B. L. R., 287. But that ruling was passed under Act X of 1859 and Bengal Act VIII of 1869, the provisions of which were vastly different to those of Act XVIII of 1873. I confess I can take no such view of the right of occupancy under the provisions of the last mentioned Act. The idea of personal right has been variously defined by jurists, to whom it is known by the term *jus in personam*, but in all those definitions the essential principle is recognized that such right avails exclusively against persons specifically determinate. In the case of an occupancy-tenant the right created in his favor by the statute is not a right which binds the landlord alone; in other words, it is not a right which has for its correlative the obligation of only the landlord of the soil—on the contrary, it is a right in land, a right which avails against all persons universally. It is therefore not a *jus in personam* and it is clear that it cannot be called a *jus ad rem*, for that class of right is only a species of personal right, and implies the right of compelling a determinate person or persons to do any specific act, the commission of which would confer a real right, known in the language of jurisprudence as *jus in rem*, or a permanent right in and over a thing which forms the subject of the right. In the case of an occupancy-tenant the right which the Legislature has conferred upon him under Act XVIII of 1873 is such as, subject to the limitations provided by the statute, prevails against all the world. The subject of the right is the land held by the tenant, and whatever changes the ownership of that land may undergo, the occupancy-right subsists in and goes with the land. The right no doubt falls far short of absolute ownership or *dominion*, defined by Austin to be a right over a determinate thing indefinite in point of user, unrestricted in point of disposition, and unlimited in point of duration." But "one or more of the subordinate elements of ownership, such as a right of possession or user, may be granted out while residuary right of ownership—called by the Romans *undae proprietatis*, remains unimpaired. The elements of the right which may thus be disposed of without interference with the right itself, in other words, which may be granted to one person over an object of which another continues to be the owner—are known as *jura in re aliena*."—(Holland on Jur., p. 144). Thus *jura in re aliena* are such of the rights *in rem*, availing against the world at large, as are acquired over and in absolute ownership or *dominion* of another person in whom the ownership still continues. Among such rights was a right known to the Roman jurisprudence as *emphyteusis*, which has been defined to be "right of a person who was not the owner of a piece of land, to use it as his own in perpetuity, subject to forfeiture on non-payment of a fixed rent and on certain other contingencies."

"It appears to me that the right of an occupancy-tenant in these Provinces resembles the *emphyteusis* of the Roman Law. It is a right carved out of the proprietary estate of the zemindar by the operation of the statute, as indeed it might have been by grants from the landlord himself. That such was the nature of the right of occupancy intended to be conferred by the Legislature upon tenants of twelve years' standing seems to me to be clearly shown, not

"only by the general provisions of the Rent Act, but by the express language of a clause in section 9. That clause lays down that "when any person entitled to such last mentioned right dies the right shall devolve as if it were land." Moreover, as shown by section 8, the tenant acquires the right of occupancy not only by virtue of his own cultivation, but also by virtue of the continuous cultivation or occupation of the land by the persons from whom he inherits. Under section 9 the right is capable of devolution by inheritance and also of transfer by act of parties, but both these capabilities are subject to the limitations provided by that section. It provides that the right of occupancy shall not "be transferable by grant, will, or otherwise, except as between persons who have become by inheritance co-sharers in such right." These limitations, however, do not alter the nature of the right so as to take it from one class of rights recognised by jurisprudence into another class. Therefore according to my view, the holding of an occupancy-tenant must, for the purposes of the present question, be regarded as land or any other real and substantive interest immoveable property. If any light can be thrown upon this question by the provisions of laws other than the Rent Act itself, I should say that the rules of procedure in regard to the territorial jurisdiction and limitation applicable to a suit by an occupancy-tenant for recovery of possession of his holding from a trespasser, proceed upon the principle that the tenant's right is immoveable property and must be treated as such for purposes of procedure.

"The question then before us resolves itself into the simpler question whether the word "transferable," as used in section 9 of the Rent Act, includes the alienation known in this country as hypothecation or simple mortgage. Under the view which I have taken of the nature of the occupancy-right, the answer to the question must, in my opinion, be the same as it would have been if the right of occupancy were a right of ownership of land qualified by the limitations which section 9 of the Rent Act has imposed upon the occupancy-right.

"It has been said that the interpretation of the word "transferable" is simply a matter of ascertaining the meaning of a word of the English language; that in its ordinary import it conveys the idea of only an absolute transfer amounting to a divestiture by the transfer of his rights out-and-out in favour of the transferee followed by possession of the latter as a necessary consequence; that hypothecation being a mere collateral security does not amount to such divestiture; that it is merely a temporary alienation, and therefore does not fall under prohibition against transfer provided by section 9 of the Rent Act. It is further argued that the object of the Rent Act was to better the condition of the tenant and not to ruin his credit, and that to hold that he is prohibited from hypothecating his right would be to ruin his credit. To give force to this contention the learned pleader, who appeared to support this view, has cited the ruling of the Full Bench of this Court in the case of *Ablak Rai v. Udit Narain Rai*, 1 L. R., 1 All., 353. in which it was held that the right of an occupancy-tenant was transferable by sale in execution of decree, but only as between persons who had become by inheritance co-sharers in such right. In the same case it was held by Stuart, C. J., that such right was transferable by sale in execution of decree without any restriction. Again the case of *Umrao Begam v. The Land Mortgage Bank of India*, 1 L. R., 1 All., 547, has been cited, in which it was held by a Division Bench of this Court that section 9, Act XVIII of 1873, did not prevent a landholder from causing the sale in execution of his own decree of the occupancy-right of his own judgment-debtor in land belonging to himself. This ruling was subsequently upheld by the majority of the Full Bench of this Court, 1 L. R.,

"2 All., 451. The learned pleader has also cited more recent rulings of this Court. In S. A. No. 847 of 1880, decided on the 27th January, 1882 (not reported), it was held that section 9, Act XVIII of 1873, did not bar a sub-letting of his occupancy by an occupancy-tenant, as by doing so he did not part with his occupancy-right within the meaning of that section. The same view was taken by the North Western Provinces Sadr Board of Revenue in the case of Goki v. Kewal Ram, 1 Legal Remembrancer (N. W. P.) R. and R. section, 202. A stronger case than any of these is S. H. No. 899 of 1881, decided on the 15th April (not reported), in which it has been held by a Division Bench of this Court that even a perpetual lease by an occupancy-tenant does not amount to a transfer such as is prohibited by section 9 of the Rent Act. These rulings, however, do not deal with the exact question before us, and whatever effect they may have upon the interpretation of the section, they do not go to the extent of showing that hypothecation is not a transfer prohibited by section 9 of the Rent Act. The exact question before us has, therefore, never been decided by this Court. The learned pleader has, however, cited the case of Gholam Mahommed v. Tika Ram, 1 Legal Remembrancer, (N. W. P.) R. and R. section 203, which not only goes to the full extent of his contention, but indeed goes beyond it. For that was a case of usufructuary mortgage, and Bench of the North Western Provinces Sadr Board of Revenue, consisting of Messrs. Carmichael and Plowden, held that "the middle paragraph in section 9 simply refers to the absolute transfer of an occupancy-right, not to a conditional and temporary transfer, whatever shape such temporary transfer may take, i. e., whether it is made by a mortgage for a term of years, or by a sub-lease for a term of years; that an occupancy-tenant in no way engages the law or endangers his occupancy-rights in a holding which he assigns over to a third person temporarily; and that the term for which such assignment may run is concurrent with, and only limited by, the occupancy-tenant's life."

"I confess I am unable to take any such view. It seems to be based upon what I cannot help feeling is a misconception of the nature of the occupancy-right. I have already endeavoured to show, by introducing a comparison between the occupancy-right of an Indian cultivator and the *emphyteusis* of the Romans, that the right as defined by the statute is—subject to its own limitations—as much a real and subsisting right as any other kind of estate carved out of the full ownership of land. The duration of the tenant's life plays no part in determining the right. Like any other estate it devolves upon heirs and is also transferable by act of the parties, the devolution and the transfer being both subject to the limitations provided by section 9. It cannot be taken to be in the nature of an estate for life; nor can the position of the tenant's heirs be compared to that of reversioners. That this is so appears to me to be clear from the fact that the right can be fully transferred by the tenant in favour of any one of the "persons who have become by inheritance co-sharers in such right," even though such transfer may be against the will and to the prejudice of all other persons of the same class, or those on whom the right would otherwise devolve upon the death of the tenant. So far as the duration of the right is concerned, it lasts so long as not only the original tenant himself, but also as such persons as are described in section 9 continue to live and occupy the land. Like *emphyteusis*, it is a right which falls short of ownership, for it has reversion expectant upon it, the reversion being not in favour of the tenant's heirs, but in favour of the zemindar to whom the right reverts on default of such persons as could succeed to it under the rules of section 9."

"In considering the arguments addressed to us as to the policy of the Rent

"Act, I think we are bound, as much as Courts of Justice in England, to recognise the rule of construction which prohibits Judges from taking into consideration the history of an individual clause in an Act, or the policy of Government with reference to any particular legislation, nor can we, in interpreting the Act, seek any help from the statements of objects and reasons which accompanied the Bill, nor from the debates in the Legislative Council, or any other proceeding which preceded the passing of the Act. It is for the Legislature to consider and determine whether the words they employ in framing the Acts will give effect to the object and policy which the state has in view. We are, no doubt, at liberty to consider the general state of the law which prevailed *in pari materia* prior to the enactment of any statute under consideration. In the present case all we can refer to for the purpose of comparison to ascertain policy of the Legislature consists of the law which preceded Act X of 1859, the provisions of the Act itself, and, lastly, the various authoritative judgments passed under that Act, in regard to right of occupancy. By the light of these rules of construction it seems to me that Act XVIII of 1873, going somewhat in advance of the Rent Act which preceded it, intended to confer settled and durable rights on such raiyats as had held the soil for the prescriptive period of twelve years, and had by unremitting labour improved the land. The creation and recognition of such a right by the express language of the statute is no doubt calculated to advance agriculture and promote peace in a country like this, the vast majority of whose population consists of agriculturists. The creation of the right was an act of grace on the part of the State, dictated by a sense of natural justice in favour of those who may be said by the length and continuity of their cultivatory possession to have earned a right in the soil which had been the object of their care and affection. But the right was not intended to favour only the tenant in actual occupation at the time, but also those who, belonging to the same stock, had taken part in the cultivation, and thus helped him in earning the right. On the other hand, as seems to me to be clear from section 6, Act X of 1859, and section 9 of Act XVIII of 1873, the state did not disregard the rights of ownership which it had previously conferred upon the zemindar by express stipulations and legislative enactments. Whilst it seemed advisable to secure for those already in long standing occupation of cultivatory holdings, some fixity of tenure and some guarantee of fair rents, it was equally necessary, both in the interests of the stock to which the tenant belonged, and of the zamindar who owned the land, to subject the right so created to such restrictions as would prevent the constant change of tenants and the acquisition of the right by those who formerly had no connection with the soil. Hence the prohibitions against transfer which section 9 provides: Those prohibitions must be so interpreted as to give effect to the policy of the law."

"The interpretation of the word "*transferable*" depends upon the meaning to be attached to the word "*transfer*." Whatever the meaning of that word, as used by the English people in ordinary parlance may be, I cannot hold that the question before us can be decided on any such ground. I fully admit that words used in statutes are, as a general rule, to receive their natural and ordinary signification, and the Courts in construing legislative enactments will adopt the popular meaning of the words and phrases. But this rule of construction is qualified by a distinct limitation, explained Parke, B. in *Burton v. Reeve*, 16 M. and W., 309, that "when the Legislature uses technical language in its statutes, it is supposed to attach to it its technical meaning unless the contrary manifestly appears," and the reason of the rule is that "such language is employed for the purpose of escaping the difficulties caused by the

"use of merely popular expressions in regard to matters precise and technical in their nature, such as the title to land or the vesting of estates or other legal subject."—Wilberforce on Statute Law, p. 124.

"Now the word 'transfer' has long been recognised to be a technical term of law in all countries 'where English is the language of Legislature and of the Courts of Justice. It is often used as a convertible term with '*alienation*,' '*conveyance*,' and '*assignment*.' Whether any distinction exists between the technical meaning of these expressions—and, if so, what that distinction is—it is not necessary exactly to determine. But it may be safely taken that the word 'transfer' is used in law in the most generic signification, comprehending all the species of contract which pass real rights in property from one person to another."

"In considering the question immediately before us, it seems to me necessary to bear in mind that we are not at present concerned with transfer which takes place by judicial process, but with such transfers only as take place between living persons by virtue of their own act. In this signification the term cannot be defined better than by saying that it means an act by which a living person conveys the whole or part of the right of ownership of property, in present or future, to one or more other living persons. This being my view, the next question to consider is the exact nature of Indian mortgages in general. Mortgage as understood in this country cannot be defined better than by the definition adopted by the Legislature in section 58 of the Transfer of Property Act (IV of 1882). That definition has not in any way altered the law, but, on the contrary, has only formulated in clear language the notions of mortgage as understood by all the writers of text-books on Indian mortgages. Every word of the definition is borne out by the decisions of the Indian Courts of Justice, as fully explained in Macpherson's celebrated work on Indian Mortgages. I adopt that definition simply for the sake of convenience, and I must not be understood to rely upon it, as if I held that anything in Act IV of 1882 gave legislative authority to the interpretation of Act XVIII of 1873. A mortgage, then, is the transfer of an interest in specific immoveable for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. The transferor is called a mortgagor, the transferee a mortgagee. Now hypothecation is only a species of mortgage. It has, in India, been used in the sense of a pledge, and the proper term for it is simple mortgage. What, then, is the nature of a simple mortgage? I again borrow the definition from the Transfer of Property Act, solely for the sake of convenience, and wholly irrespective of its legislative authority. Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that in the event of his failing to pay, according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage. Now, it is quite clear to my mind that the most essential of the elements which constitute the simple mortgage is the right to cause the property to be sold—a right without which the transaction, whatever else it may be, certainly cannot be called a hypothecation, pledge or simple mortgage. This right does not come into existence when the actual sale takes place by virtue thereof, but it comes into existence at the time when the mortgage is made: it subsists in the property ever afterwards so long as the mortgage-money remains unpaid: it limits the interests of the mortgagor as they were at the time of the mortgage. Jurisprudence recognises it as one

"of the various species of *jura in re aliena* or estates carved out of the full ownership of property. It may happen that the right, though not apparently, but in reality, is tantamount to absolute transfer, in its virtual effect. For instance, when land of the value of Rs. 100 is pledged by hypothecation in lieu of a debt amounting to Rs. 101, the mortgagor is simply a nominal owner and his *nuda proprietas* is worth less than zero. I am, therefore, of opinion that the rights created by hypothecation in this country amount to nothing more or less than a transfer of an estate amounting to a transfer of an immoveable property, though of course not an absolute transfer. The feature which distinguishes hypothecation from other forms of mortgage consists in the fact that it does not entitle the mortgagee to enjoy the physical qualities of the subject of the mortgage. That this distinction does not alter the nature of the transaction so as to take it out of the category of *transfer* is clear to me from the manner in which the right is treated by jurisprudence. The reason of the juristic view is well described by a modern writer on jurisprudence. "The *right of sale* is one of the component rights of ownership, and may be parted with *separately*, in order thus to add security to a personal obligation; when so parted with, it is a right of pledge, which may be defined as a right *in rem* realizable by sale, given to creditor by way of accessory security to a right *in personam*. The objects aimed at by a pledge are, on the one hand, to give the creditor a security on the value of which he can rely, which he can readily turn into money, and which he can follow even in the hands of third parties; on the other hand, to leave the enjoyment of the thing in the meantime to its owner, and to give him every facility for disincumbering it when the debt for which it is security shall have been paid."

"Such being the very nature and essence of the rights created by hypothecation, it follows that if hypothecation is valid and legal, the incidents which flow from it must necessarily be held to be valid and legal too—on the principle that when the law permits a thing, it also permits that which is essential to its accomplishment. The most essential incident of hypothecation is the *eventual sale* by order of Court—a sale which in the ordinary course of law must be held by public auction, at which *ex necessitate rei* any person may bid, and which must be concluded in favour of the highest bidder. If hypothecation does not carry with it this *right of sale* at the instance of the mortgagee, and without any restriction as to the class of bidders or purchasers, it cannot be called hypothecation at all. For, if any such restrictions are attached to the right of sale, they are essentially repugnant to the very right conveyed, and must end in defeating the entire object of the pledge. Therefore, so long as I hold that under terms of section 9, the occupancy-tenant has *no right of sale*, I must, as a legal consequence, also hold that he cannot convey that right to another, on the maxim that no man can give to another what he himself does "not possess—*nōn dat qui non habet*."

"But it has been said that the terms of section 9 have not the effect of prohibiting hypothecation, but only go to reduce the value of the security. For, it is contended that the occupancy may be lawfully sold in enforcement of hypothecation so long as the bidders in auction belong to the class of persons in whose favour transfer could have been legally made under that section. It seems to me to be clear that no decree of Court could, in enforcing the lien created by the hypothecation-bond, deal with the occupancy-right more freely than the tenant himself could have done. And it follows that if the tenant could not transfer his rights to total strangers the decree of Court could not do so either. If such were not the rule the prohibitions of law could be easily circumvented by the occupancy-tenant and the holder of the hypo-

"the cation-bond. All that is now contended is, that a decree enforcing the hypothecation lien could be executed subject to the restriction that the sale in auction must be held in such a manner that the only persons allowed to bid for the property should be "persons who have become by inheritance co-sharers" in the right of occupancy. I am not aware of any process recognized by the rules of procedure which can impose any such restriction on a public auction-sale to be held in execution of decree. The sale, in fact, can no longer be called a *public auction* sale, and indeed cannot achieve the very objects for which auction-sales are provided by the law. Supposing a case in which the decree (passed on a hypothecation-bond executed by an occupancy-tenant) is put into execution and no "co-sharer" of the occupancy-tenant exists, or such co-sharers as do exist decline to bid in auction, the question arises, what happens to the decree which orders sale? It seems to me the decree must necessarily remain wholly infructuous and entirely incapable of execution so far as it directs the sale of the occupancy-right. Again, supposing the hypothecation-bond was executed by the occupancy-tenant jointly with *all* his co-sharers, the same difficulty arises in a more aggravated form. *Ex hypothesi* the property would be put to auction-sale, and the only persons who would bid in the auction would be the judgment-debtors themselves—an anomaly which no system of procedure with which I am acquainted can permit. If I could hold that hypothecation of the occupancy-right is allowed by the law, that the lien created thereby can be enforced by decree of Court, I should be driven to the logical conclusion that a well-advised tenant, in borrowing money on the security of his tenure, could effectually defeat the very essence of the pledge by getting all his co-sharers to join in the bond. For, *ex hypothesi*, whilst a decree could enforce the lien, if the hypothecation-bond was executed by only one of the co-sharers in the occupancy-tenure, the lien would be entirely unenforceable when all the co-sharers had joined the bond. And we have to face the anomaly that only one co-sharer in an occupancy-right could confer by hypothecation of the tenure rights greater than *all* the co-sharers collectively could have conveyed. In other words, what all the owners of an occupancy-tenure could not do, only one of them can do.

"And it follows as a logical consequence that the larger the number of obligors, the smaller the value of the security obtained by the obligee; and if all the co-sharers are obligors, the value of the security is equal to zero. On the other hand, if, subsequent to the execution of the hypothecation-bond, the number of co-sharers in the occupancy-tenure increases, the number of possible bidders in auction also increases, thus enhancing the chances of an auction-sale being held, and augmenting the value of the security. And again, on the other hand, if, subsequent to the bonds the number of the obligor's co-sharers diminishes by death or otherwise, the value of the security would diminish as each death among the co-sharers took place. The right of hypothecation, as I understand the term, can be subject to no such sliding scale of increasing and diminishing value. It is, as I conceive it, a right which, once validly created, subsists in the property, depends for its value only on the value of the subject-matter or the hypothecated property. Nor can I hold that a valid hypothecation, which I have endeavoured to show means the transfer of the *right of sale*, can be subjected to the uncertainty of being enforceable or non-enforceable according to the will or existence of persons wholly unconnected with the transaction. And if I am right in holding that there is no process of procedure known to our law by which a public auction-sale can be limited to a determinate class of intending purchasers, it must necessarily follow that no decree passed in enforcement of hypothecation of an occupancy-tenure can be executed. It also follows that if such a quali-

"fixed public auction-sale could be ordered and held, its only effect would be to take from those interested in saving the tenure money which they need never have paid to secure the occupancy-right from sale. For it is not questioned that the refusal of the co-sharers to take part in the auction-sale would have the effect of rendering the security ineffective and the decree passed thereon incapable of execution, so far as the right of occupancy is concerned. I am unable to hold that the law contemplates any such anomalies and results. And for these reasons I hold that hypothecation by an occupancy-tenant of his interest is a transfer within the meaning of section 9, Act XVIII of 1873; and this is my answer to the reference in these two cases."

Sub-section (3), Clause (e):—*Vide* notes under sections 21 and 85, *ante*.

Sub-section (3), Clause (f):—*Vide* notes under sections 38 and 52.

Sub-section (3), Clause (g):—*Vide* notes under section 40.

Sub-section (3), Clause (h):—*Vide* notes under section 67.

Proviso (II):—"I move this amendment to remedy what I believe to be a serious defect in the Bill. The main provisions of section 178, which prevent the tenant's statutory rights from being defeated by special contracts, have my cordial support. But the section very properly accords a particular treatment to the reclamation of waste lands. It enables the landlords to bar the exercise of occupancy-rights during the currency of a reclamation lease—a lease which may run for an indefinite period, and which would probably run for twenty or thirty years. The Bill thus makes provision for the reclamation of waste lands by means of tenants holding under long leases. But it omits to make provision for the reclamation of waste lands by the landlord himself, working with his own servants, or with hired labour. This omission is probably due to the circumstance that the latter class of reclamation has hitherto not been common. But cases of such reclamations have come to my notice, and I am told that their infrequency is due in part to the discouragements under which they are placed even by the present law. In the only case in which, so far as I know, extensive reclamation has been effected by the steam-plough in Lower Bengal, the landholder writes to me that the present law renders such reclamation disadvantageous to the reclaiming landlord; while under the new law no landholder would think of undertaking such reclamation, unless protected by some accidental local tenure like the *utbandi*. Yet there are several classes of reclamation which cannot be carried out by cultivators, but must be conducted by the landlord, or by a combination of neighbouring landlords, if they are to be effected at all. The Council is, I think, agreed that it is the interest alike of the cultivators and of the State that such reclamations of waste land should be undertaken. To add to the cultivated area is the most direct and the most permanent remedy for the great evil in certain parts of Bengal—over-population. But such reclamations will certainly not be undertaken by landholders if the Bill is allowed to stand as at present. My amendment only proposes to place the landholder who reclaims land at his own charges by hired labour, in as good a position as the landholder who reclaims by means of tenants on long leases. In so doing I desire to say that the amendment has been carefully framed with the intention to cover only *bond fide* reclamation of waste land. I hope that the representatives of both the landlords and the cultivators will see their way to accept an amendment, which is submitted to the Council in the interests of both."—*Supplement Gazette of India*, 9th May 1885, p. 785. *Per* The Hon'ble Mr. Hunter.

179. Nothing in this Act shall be deemed to prevent a

Permanent mokurari leases. proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mokurari lease on any terms agreed on between him and his tenant.

Vide notes under clause 8 of section 3 ante and also notes under section 5, Tenures. Proprietors have had this right since 1812. Section 52 of Regulation VIII of 1793 provides: "The zemindar or other actual proprietor of land is to let the remaining lands of his zemindari or estate under the prescribed restrictions in whatever manner he may think proper; but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land or any farmer of land of whatever description, over and above what is specified in the engagement of the persons paying the same, shall be considered as extorted and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this section are the following:" And then follow sections 53 to 60, *vide* sections 2 and 3, Regulation V of 1812; section 2 of Regulation XVIII of 1812; and section 2 of Regulation VIII of 1819.

180. (1) Notwithstanding anything in this Act, a raiyat—

Utbandi, chur and dearah lands.

(a) who in any part of the country where the custom of utbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(b) who holds land of the kind known as chur or dearah, shall not acquire a right of occupancy—

in case (a), in land ordinarily held under the custom of utbandi and for the time being held under that custom, or

in case (b), in the chur or dearah land,

until he has held the land in question for twelve continuous years; and until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of utbandi in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

"We have, in section 180, put utbandi lands on the footing on which chur lands were placed by section 213 of the Bill No. II, that is to say, no occupancy-right will be acquirable in them until they have been held for twelve years, and meantime the tenant will be bound to pay whatever rent may be agreed on between him and his landlord. We have further provided that Chapter VI of the Bill shall not apply to such lands." *Select Committee's Report.*

There exists in the district of Krishnaghur a custom under which tenants can cultivate *khamar*, on payment of certain high rates of rent. In the case of such tenants there exists an implied agreement between the parties that such rent shall be paid, and the amount of land so cultivated and the rent to be paid for it are ascertained each year by actual measurement. The lands in question are called '*utbundi lands*,' and the rates at which the rent of such lands is payable are called '*utbundi rates*'—(*Mirjan Bisvas v. James Hills*, 3 W. R., Act X, 159). "*Nuksau jote*" is very much the same as *utbundi*, and there is nothing in an *utbundi* tenure incompatible with the right of occupancy. Where by the custom of a particular locality rent is payable when the land can be cultivated and not payable when the land is not cultivable; and the raiyat pays rent for the period that he could cultivate and does not pay when he could not cultivate, he is still to be considered as having held, and having paid the rent sufficiently to come within the meaning of the law—(*Premchand v. Soorendra Nath*, 20 W. R., 329, *per L. S., Jackson, J.*) The same learned Judge defines *utbundi* tenures thus: "An *utbundi* tenure is one by which the raiyat holds a certain area of land but for which he pays rent according to the quantity of that land which year by year he cultivates. The rent varies according to the cultivated area. A zemindar cannot eject tenants who have been holding or cultivating for a period of more than twelve years even though they were originally tenants-at-will"—(*Hyder Buksh v. Bhopendra Deb*, 15 W. R., 231.)

The law about the *utbundi* tenures is now settled by this section which ought to be read with sub-section (2) of section 20 *ante*.

181. Nothing in this Act shall affect any incident of a *ghatwali* or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Saving as to service-tenures.

See the Settlement and Redemption Acts *post*. See also *Leelanund v. Manranjan*, I. L. R., 3 Cal., 251. A *shikmi ghatwali* tenure, held under the superior *ghatwal*, is not liable to be sold in execution, nor are its proceeds liable to attachment for satisfaction of the debt due from its holder—(*Bally Dobey v. Ganei Deo*, I. L. R., 9 Cal., 388). Where a permanent tenure has been granted by a *ghatwal*, if the successor of such *ghatwal*, being one of the *ghatwals* to whom Regulation XXIX of 1816 applies, wishes to resume that tenure, he must bring his suit within 12 years after succeeding to the *ghatwali* estate. The possession of the tenant is adverse to him from the time of the decree of his immediate predecessor. Art. 139, Sch. II of Act XV of 1877, regarding suits by landlords to recover possession from tenants giving 12 years' time from the determination of the tenancy, does not apply to cases in which the plaintiff seeks to recover a tenure permanent in its nature and not determinable by notice—(*Modhoo Kooery v. Tekait Ramchunder*, I. L. R., 9 Cal., 411.) A *ghatwali* tenure in *Khurkpore* is transferable if the zemindar assents and accepts the transfer. Such assent and acceptance may be presumed from the fact of the zemindar having made no objection to a transfer for a period of over 12 years, and when such a fact has been found a Court ought to recognize such a transfer.

In a suit brought to recover possession of a *ghatwali* tenure in *Khurkpore*, which had been brought to sale in execution of a decree against a previous *ghatwal* and purchased by the defendants, the plaintiffs on the *Mitakshara* law and certain family customs for the purpose of their right. The lower Court applying such law and custom

found that the tenure was transferable, and that it was joint ancestral property, and gave the plaintiffs a decree for two-thirds of the property and the defendants a decree for the remaining one-third, holding that to be the extent of the previous ghatwali interest which had been purchased by the defendants. *Held* on appeal that the decision of the lower Court was erroneous; that in dealing with a ghatwali tenure, the Court must have regard to the nature of the tenure itself, and to the rules of law laid down in regard to such tenures, and not to any particular school of law or the customs of any particular family; and that a ghatwali, being created for a specific purpose, has its own particular incidents and cannot be subject to any system of law affecting only a particular class or family—(*Annundo v. Kaliprosad*, I. L. R., 10 Cal., 677). In the area of a zemindari were included at the Permanent Settlement the mouzahs which made up the mahal of a jaghir, the succession to which was subject to the sanction of Government, the jaghirdars being bound to render public services. One-third of the revenue assessed upon the jaghir mahal was retained by the jaghirdar, forming no part of the zemindari assets on which the jumma of the latter was fixed. It was held that whether this jaghir was a ghatwali tenure or not, within the meaning of the term as applied in Regulation XXIX of 1814, (the zemindari being Pachit, adjoining, and at one time included in Birbhum), the jaghir was analogous to such tenure as described in the preamble to the Regulation; that the nature of the tenure had not been altered by the Permanent Settlement, after which the services due by the jaghirdar remained as before, public services, and continued to be due to the Government; that the zemindari became entitled only to the rent, or revenue, which was previously due to the Government, and in respect of which he was assessed, and did not become entitled to the services in respect whereof the one-third of the rent or revenue was allowed as compensation to the jaghirdar; and that the jaghir, though hereditary, was not subject to the ordinary rates of inheritance according to the Hindu or Mahomedan law, but was held upon the condition of approval of the heir by the Government. Thus were precluded both division of the jaghir mahal upon the death of the holder, and alienation during his life. It followed that the jaghir mahal was not liable to attachment and sale, in execution of a decree against the father and predecessor in estate of a jaghirdar so approved, as assets by descent in the possession of the latter—(*Nilmoni v. Bakra Nath*, I. L. R., 9 Cal., 187; *Leelanund v. The Government of Bengal*, 6 Moo. I. A., 101; compare I. R., 9 I. A., 104).

182. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

Homesteads.

Interpretation.—This section is rather perplexing. As the wording of the section goes, the homestead spoken of here must be held by a raiyat, and a raiyat is primarily a cultivator (section 5). Persons other than raiyats, therefore, who hold *bastoo* or homestead land in villages, towns, or cities, e. g., bankers, banians, or traders, do not come under the purview of this section. They will be governed by the old law. Now what should we understand by the word 'raiya' in this section? The word is not used in a wide sense for a cultivator or an agriculturist in general, but a cultivator, or an agriculturist having relation with the

landlord of the homestead. Hence in order to claim the protection of this section, not only the person holding the homestead should be a cultivator but he should be a cultivator holding culturable land under the landlord of that homestead, because a cultivator who does not cultivate under such a landlord though he may do so under a stranger, is no more that landlord's raiyat than a banker who holds a homestead under him but possesses no culturable land whatever. The essence of a raiyat is not only cultivation but also payment of rent or acknowledgment of a tenancy. A cultivator is not *ipso facto* a raiyat, though a raiyat may be so. If this were not the correct interpretation of this section, the residents and sojourners of Howrah or any other town, who may have a plot of land in their cultivation in their own village in the country under a certain landlord, may be a raiyat under this section, and claim right of occupancy in a homestead which they may have held in the town under some other persons, and no contract or anything would bar the accrual of such right after 12 years. (Section 178 *ante*). Such a theory would be absurd. The whole Act again is limited by section 4. It contemplates only three classes of tenants, *e. g.*, (1) tenure-holders, *i. e.*, rent-receivers or rent-collectors, (2) raiyats or cultivators, and (3) under-raiyats, and under neither of these heads the holder *per se* of a homestead land would fall. See notes under sections 4 and 5 *ante*.

Speaking of raiyat as contemplated by this section, the Legislature contemplates three possible cases: When a homestead is held by raiyat as a part of his holding he is protected under sections 76, 20 and 21 of the Act, and this section does not apply. When, however, he does not hold it as part of his holding, the incidents of his tenancy shall be regulated by local custom or usage; and when there is no local custom or usage, by the provisions of this Act applicable to land held by a raiyat. Nevertheless in all the three cases, the holder must be a raiyat. It is only the third case that may cause some difficulties. Mr. Field says: "It is to be observed that the provisions of this section apply to raiyats only—See the definition in section 5 *ante*. They do not apply to other persons holding *bastoo* or homestead land in villages, towns, or cities, who continue to be governed by the existing law."

The explanations of this section as given by the Select Committee and the mover of the Bill are not satisfactory: we may say they go against the section to some extent.

"We have omitted Chapter VII of the original Bill, which was intended to provide for the case of a raiyat holding his homestead otherwise than as a part of his holding as a raiyat. As, however, the absence of any mention of such tenancies in the Bill might give rise to misapprehension, we have thought it well to insert a section (216) expressly providing that their incidents will be regulated by local custom" (Select Committee's Report on B. T. Bill No. II.)

And section 216 of Bill No. II ran as follows: "Where a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by custom."

"We have considered the proposals of the Government of Bengal regarding homestead lands, and find that they practically resolve themselves into this, that the tenure of such lands should, as provided by section 216 of the Bill No. II, be regulated by local custom, with this addition, however, that, subject to local custom, they should be regulated by the provisions of the Bill applicable to land held by a raiyat. We have amended the section (182) on these lines." (Select Committee's Report on B. T. Bill No. III.)

"We have omitted the Chapter in the original Bill relating to *bastoo* or homestead lands, and have brought all our legislation on this point into one brief section, to the effect that homestead land, when not held as part of the holding,

shall be dealt with according to local usage; and when local usage cannot be ascertained, then it should be treated as if it were ordinary raiyati land. The varieties of local usage were so many and of such importance that any regulations which could have been framed must have done harm and have been found inapplicable in many places." (Sir Steuart Bayley in the Debate.)

Now the explanation here given by Sir Steuart Bayley is either defective or contradictory of the section itself. The honorable member does not say that the section does not provide for all classes of persons holding homestead land, but only of raiyats. Besides the distinction of raiyati and other land does not obtain in the Act. That distinction was once attempted in the original Bill, but it has been subsequently abandoned. All that the honorable member means to say is that when a raiyat holds homestead land under his landlord as a distinct holding, he may be treated as holding it (where no custom can be ascertained) as a raiyat and may claim the privileges of section 20 and other provisions of the Act.

Jurisdiction :—See pp. 453-456 *ante*.

Law on the subject of homestead :—The sale laws have always protected dwelling houses. When proprietors were at the time of the Permanent Settlement prohibited from granting leases for a longer period than ten years, a special exception was made in favor of leases of ground "for the erection of dwelling houses or buildings"—*Regulation XLIV of 1793, section 8*. Similarly protection against purchasers at a sale for arrears of revenue has also been afforded in the sale laws to "*bonâ fide* leases at fair rents, temporary or perpetual, for the erection of dwelling houses or manufactories or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or the like beneficial purposes"—(*Act XII of 1841, sections 27 and 28; Act I of 1845, sections 26 and 27; and Act XI of 1859, sections 37, 52*). These provisions have been quoted and discussed, *ante* at pp. 68-71 and 82. The argument is that if auction-purchasers who are given some special privileges cannot annul these tenures, much less can a proprietor do so. On the other hand it has been argued that the sale laws were meant to protect the revenue of the estate, and as no one would purchase unless some special privileges were given to him, the sale provisions can offer no argument to the tenant against the rights of the zemindar conferred by the Permanent Settlement.

As to the effect of the definition of "land" in Act V of 1867 (B.C.) upon section 6 of Act VIII of 1869 (B.C.) and also of other decisions on the subject, *vide* section 20, pp. 102-103 and 110-111.

The case law on the subject of homestead land is the only law that now can be properly said to exist. The tendency of the Judges is to hold that the Permanent Settlement of Bengal has made the zemindars the proprietors of the soil; at any rate it has settled the estate with them, and the zemindars are entitled to enter into every piece of land within their estate, unless barred by any special contract or statutory law; that the occupancy-raiyats are protected by the statute against this right of the zemindars, and so are holders under contract, but that those holders who are not occupancy-raiyats or persons holding under contract to the contrary, have no right to resist the landlord when he wants to enter into the land. To this an exception is made as to customary right that a tenant may possess against the zemindars. Where such custom is proved, the question is set at rest, but it has been held that no length of possession will create such a customary right or confer any right of possession as against the landlord upon the tenant. A question has also further cropped up as to the status of the persons holding under a contract, and it has been held that a contract may be express or implied, and that there may be circum-

stances from which a presumption may be drawn of a permanent grant. The earliest case on this point is that of *Chandra Kumar Rai v. Kadermani Dass, &c.*, 7 W. R., 247, where a custom was proved that a *khudkash* raiyat, who had built a pucca house on the land and acquired a right of occupancy under section 6 of Act X of 1859, should have the right to transfer. See also *Nichan Sahoo v. Jhooree Sahoo*, (S. D. A. Decis. for Bengal, 1845, p. 243.)

In the case of *Thakur Chundar Paramanick, &c.*, B. L. R., F. B., 595, A, the widow of B, sold a portion of B's estate to C, who sold to D. After A's death, E, the heir of B, successfully sued to set aside this alienation as having been made without lawful necessity. The question then arose whether E was entitled to certain buildings erected by D during A's lifetime, and this question was referred to a Full Bench of five Judges (Peacock, C. J., Bayley, Norman, Pandit, and Campbell, JJ.) Peacock, C. J., in delivering the unanimous opinion of the Full Bench said: "We have not been able to find in the laws or customs of this country

The maxim quicquid plantatur solo solo cedit any traces of the existence of an absolute rule of law that whatever is affixed to, or built on the soil, becomes a part of it, and is subjected to the same rights of property as the soil itself. . . . In the case of *Khoderam Surma v. Trilachan*, Select Reports, 35, we find it laid down that 'if a member of a joint Hindu family build a brick house on ancestral land with separate funds of his own, such house would not be a property in which shares might be claimed by his coparceners: coparceners in the land would only have a claim on him for other similar land equal to their respective shares.' That the maxim *quicquid plantatur solo solo cedit* does not apply in such cases was recognized by the late Sadar Court in the case of *Jankee Singh v. Bukhooree Singh*, (S. D. A., Rep., for 1856, p. 761). That was a suit for the demolition of buildings erected on joint property by a member of a joint Hindu family without the consent of his co-sharers—(For similar decisions see *W. G. Nicose Pogose v. Niyamatula Ostagor*, S. D. A. Rep., for 1851, p. 1517, *Sadr Diwani Adalat, North-Western Provinces*, 25th November 1863, p. 418; and *Kalipersad Dutt v. Gauripersad Dutt*, 5 W. R., 108). They show at least that the English rule above alluded to does not prevail in this country. . . . According to the civil law, if a person building on the land of another used his own materials, not knowing that the land was not his own, when the building was destroyed he could reclaim the materials, or if he was in possession of the building, could refuse to deliver it to the owner, unless he was indemnified for his expenses at least so far as they had been incurred profitably to the owner of the soil.—(See *Sandars' Justinian*, Book 2, tit. 1, para. 30). We think it clear that, according to the usages and customs of the country, buildings and other improvements made on land do not by the mere accident of their attachment to the soil become the property of the owner of the soil, and we think it should be laid down as a general rule that, if he who makes the improvement is not a mere trespasser, but is in possession under any *bona fide* title or claim of title, he is entitled either to remove the materials, restoring the land to the state in which it was before the improvement was made, or to obtain compensation for the value of the building if it is allowed to remain for the benefit of the owner of the soil—the option of taking the building or allowing the removal of the material remaining with the owner of the land in those cases in which the building is not taken down by the builder during the continuance of any estate he may possess." In this case, it will be observed, there was no relation of landlord and tenant existing between the parties.

In *Sibdas Bandopadhyaya v. Bamandas Mukhapadhyaya*, 8 B. L. R., 237; S. C., 15 W. R., 360, the assignee of the purchaser of a tenure sold under the provisions of Act VIII (B. C.) of 1865 sued the assignees of the purchasers of a house and the site thereof, such site forming a portion of the tenure, and the house and the

site having been separately sold in execution of a decree of the Civil Court. The principle of the above Full Bench decision was held to apply. Norman, J. (Loch, J., concurring) thought that the option to insist on the destruction of a brick-built house and the removal of the materials is one which should and must be exercised promptly or not at all. The original purchaser, the plaintiff's assignor, did not exercise the option, he acquiesced in the continuance of the building on the ground, and sought to make use of his supposed legal right for the purpose of extorting an excessive price or rent for the use of the site of the house. This, it was held, he could not do, and the Court, without expressing a final opinion whether the original purchaser, immediately on acquiring the tenure, could have called on the purchasers at the Civil Court sale to remove the materials of the house and give actual possession of the land, decided that such a right, if it ever existed, had been lost, and that the only right which remained to the plaintiff was that of receiving a fair rent for the land. The judgment in this case contains the following passage: "Let us now see

Rights of landlord and tenant when tenant builds on land.

what are the respective rights of landlord and tenant where buildings are erected by a tenant during the tenancy. I think there is no doubt but that zemindar might object to the erection of brick houses on land let for the purposes of cultivation, and if he resorted to a Court of justice might obtain an order restraining his raiyat from doing anything which would substantially alter the character of the tenure. In the North-Western Provinces it has been held that a tenant, having a right of occupancy, planting trees on his holding without his landlord's permission, or even digging a *kutchra* well, commits such a breach of the contract of tenancy as warrants the landlord in suing to eject him. But if the landlord, instead of objecting to the erection of a brick house on the holding, were to remain passive and allow a house to be built, knowing as he necessarily would in a case such as that now before us, that the security for the rent would be enormously increased by the erection of the building, it appears to me that he could not afterwards be heard to say that the tenant had done any wrong in erecting the house on the tenure. If in such a case the tenancy should be determined, the position of the parties would appear to be this: The landlord would be the owner of the soil, the tenant of the house. I think it would be contrary to the principles of equity and good conscience to allow the landlord to insist on the needless destruction of a valuable building, or to allow him to claim to remove it, without making to the owner full compensation for its value. I may refer on this point to the Roman Civil Law Institutes, Book 2, tit. 1, section 30, and Digest 7, Book 41, chapter 1, section 7, § 12. By that law, if the person who built was honestly in possession of the land, and the owner of the soil claim the building, but refused to pay the price of the materials and the wages of the workmen, the claim of the owner might be rejected."

In *Beni Madhub Banerjee v. Jai Krishna Mukerji, &c.*, 7 B. L. R., 153: S. C.,

Effect of acquiescence.

12 W. R., 495, the zemindar sued to eject three persons, as trespassers. They set up a purchase from raiyats who had *mourasi* and *mokurari* interests, and this purchase was proved. In the *ka-buliya*t of their vendors, executed some forty years previously, there was a stipulation that pucca houses should not be erected on the land, which was, however, let for building huts and residing thereon. Pucca houses were without objection erected on the land many years (apparently some thirty-five) before the suit was brought. Glover, J., was for ejecting the defendants, but Kemp, J., whose opinion as that of the senior Judge prevailed, took a different view: "Looking to the purpose for which the land was originally leased," said he, "to the fact of the long and uninterrupted occupation of the defendants, their ven-

dors, and the ancestors of those vendors, and to the conduct of the plaintiff in permitting the defendants to erect a *pucca* dwelling-house on plot No. 1, I do not think it equitable to give the plaintiff a decree to eject the defendants and to take direct possession of the land, and that, too, without any compensation whatever to the tenants, who are to be summarily turned out of house and home. On appeal Mr. Justice Kemp's judgment was affirmed by a Bench of three Judges (Peacock, C. J., L. S. Jackson and Macpherson, JJ.) Peacock, C. J., saying: "Mr. Justice Kemp . . . thought that in equity the plaintiff was not entitled to turn the defendants out of the lands, because he stood by and saw them erecting *pucca* buildings on the land without any objection whatever. If he allowed the defendants to erect *pucca* buildings upon the land without objecting, it appears to me that he was bound in the same way in equity as if he had granted them a *pottā* with the privilege of building *pucca* houses on the land." This case was quoted and followed in *Brojonath v. Stewart*, 8 B. L. R., Ap., page 51 (*per* Paul, J.): and in *Durga Persad v. Brindabun*, 7 B. L. R., 159, (*per* Ainslie, J.)

Reference may also be made to the case of *Rani Rama v. Jan Mahomed*, 3 B. L. R., A. C., 18. Here it was said: "If the plaintiff has a legal title to the land, and has stood by without asserting his rights, allowing Imdad Ali to sell to the defendant, standing by while Srinandan has built on and planted the land in the belief which the plaintiff has encouraged, or at least permitted him to entertain, that he had a good title, it will become a question whether the utmost the plaintiff is entitled to is not to get a reasonable rent from him—(See the judgment of Mr. Justice Trevor in *Hurro Chundro v. Hulodhur*, W. R. Jan.—July 1864, page 166). The decision in that case appears to be in accordance with sound principles of equity. There is a case cited in Story's *Equity Jurisprudence*, (vol. II, section 1549), *The Somersetshire Canal Company v. Harcourt*, 24 Beav., 571, decided on a similar ground: and see also the *Rochdale Canal Company v. King*, 16 Beav., 630. The rule of equity is thus stated by Lord Eldon in *Dann v. Spurrier*, 7 Ves., 131: "The Court will not permit a man knowingly, though passively, to encourage another to lay out money under an erroneous opinion of title, and the circumstances of looking on is, in many cases, as strong as using terms of encouragement. When a man builds a house on land, supposing it to be his own or believing he has a good title, and the real owner, perceiving his mistake, abstains from setting him right, and leaves him to persevere in his error, a Court of equity will not allow the real owner to assert his legal right against the other without at least making him full compensation for the money he has expended." (See also *Ramsden v. Dyson*, L. R. 1 H. L., 129.)

In the case of *Peter Nicholl v. Tarini Charan Bose*, 23 W. R., 298, while it was fully recognized that the landlord had the right to protect the land from damage or injury, and to prevent any use of it, by which its permanent usefulness might be impaired or endangered, a suit for an injunction to restrain brick-making and for damages was dismissed, as the landlord had for five and twenty years acquiesced in the land being used for making bricks.

In *Durga Persad v. Brindabun*, 7 B. L. R., 159, A had permitted B to erect a thatched dwelling-house with mud walls on a piece of land belonging to A. B so occupied the land for more than forty years, whereupon the house and site were sold in execution of a decree against B, and were purchased by C. It was held that B had become possessed of an assignable interest, and that A was not entitled to dispossess C. A case somewhat similar is that of *Bukshoo v. Ilabi Buksh*, 5 Decis. N. W. P., 365.

Effect of long occupation of land with buildings.

In the case of *Addaita Charan v. Peter Das*, 17 W. R., 383; S. C., 13 B. L. R., 417 *note*, the plaintiff, the transferee of the landlord's rights, sued to eject a person who had occupied the land upon which his huts were standing

Compare this case with that of Nurput Sing v. Nutkoo Ram, 3 Decis. N. W. P. c. 282.

for some thirty years, and ten or twelve years before the institution of the suit had put a *kutchha-pucca* wall round it. A decree for ejectment was passed, the High Court (L. S. Jackson, J.) observing: "It seems to be quite clear that the *permissive* occupation of land under such circumstances as the defendant has held this land will not give him a right to retain possession of it when the landlord desires to put an end to the tenancy." The question of compensation was here raised, but there was no evidence on the point. Somewhat similar to this case was that of *Mohur Ali v. Ram Rutun* 21 W. R., 400, in which the defendant was holding "permissively and without any right" (for how long does not appear) a piece of land of very small area and occupied by a shop. The High Court (Kemp and Glover, JJ.) confirmed the decree for ejectment passed by the lower subordinate Court. The facts of this case must have differed from those of the case at 7 W. R., 152, in which the opinion of Kemp, J., prevailed. In this latter case there had been a grant of the land for purposes of *residence* many years previously.

In the case of *Prosonno Kumari v. Rutton Bepari*, 1 L. R., 3 Cal., 696, the established facts were that the defendants, their father and grandfather, had been occupying the land for fifty or sixty years, during which time it had been used as a homestead, and occupied by a house and fruit trees. There was no evidence as to the origin of the tenancy, or as to who had built the house or planted the fruit trees. Rent had been regularly paid. The landlord, requiring the land for the erection of a *kutchery*, served the defendants with notice to quit, and then sued to eject them. It was held that he was entitled to do so. The cases of *Shib Dass v. Rama Das* and *Addaita Churn v. Peter Das* were referred to. The High Court, Garth, C. J., and Birch, J., say in their judgment: "There is no law, of which we are aware, in this country, which converts a holding at will, or from year to year, or for a term of years, into a permanent tenure, merely because the tenant, without any arrangement with his landlord, chooses to build a dwelling-house upon the land demised. Such a law, if it existed, would in a large number of cases lead to great injustice and inconvenience, and would often leave landowners entirely at the mercy of their raiyats. Small *kutchha* dwellings in this country may be erected in a short time and at a very trifling expense; and if a landlord, as soon as he or his agent discovers such a dwelling to have been erected, were obliged, on the one hand, to turn the tenant out, or make him pull down his house; or, on the other hand, as the only alternative, to allow the tenant's permissive holding to become a permanent tenure, the consequences would often be disastrous to tenants or very unjust to landlords. The truth is that the terms of a holding, as between landlord and tenant, must always be matter of contract, either expressed or implied. If they enter into an express agreement of tenancy, either written or verbal, such agreement generally defines the terms of the holding. If, on the other hand, a tenant is let into possession without any express agreement, and pays rent, he becomes a tenant-at-will, or from year to year; or, in other words, holds by the landlord's permission upon what may be the usual terms of such a holding by the general law or by local custom; and in such a case he is, of course, liable to be ejected by a reasonable notice to quit. Occasionally there are local customs by which special terms and incidents are engrafted upon the contract of tenancy; but the existence of the custom in such cases must be matter of proof, and no Judge has a right to act upon such customs unless their existence is duly established. In this case no

such custom is even suggested, and as there was no express agreement of tenancy, and no evidence of its origin, the defendants must be considered as holding from year to year, and liable to be ejected by a proper notice to quit."

"If a tenant wishes to build dwelling-houses upon his land he should take care to make a proper arrangement accordingly with his landlord. He has no right to hire his land for one purpose upon an ordinary permissive holding from year to year, or at will, and then, by using it for another purpose, to convert it, at his own option, and without consulting his landlord's wishes, into permanent tenure. Such a law, if it were in force, would be manifestly unjust to the landlord, and would lead to much litigation and inconvenience."

"In some instances, no doubt, either from expressions used in the contract of tenancy, or from the fact of land having been let by a landlord expressly for the purpose of the tenant building *pucca* houses upon it, such circumstances, coupled with a long and uninterrupted possession by the original grantee and his descendants, have been held to raise a presumption that the tenure was intended to be permanent: but such cases often create doubt and difficulty, and it is always far safer for a tenant if he means to build, to have the terms of his tenure clearly defined by a written instrument."

In this case no question of compensation appears to have been raised, and the houses were apparently ordinary huts and not brick buildings. There was no evidence that the holding was of a permanent character, or for any defined period.

The principle of this decision was extended (wrongly we submit) to *Taruk Podo v. Shyama Churan*, 8 C. L. R., 50, in which the defendant had been in possession for upwards of 20 years, and the lands had been originally put into the possession of the defendant for building purposes, and the defendant had built mud houses, planted trees, and dug a tank. The Court (McDonell and Field, JJ.) observed: "There is no law in this country which gives anything in the nature of a protected tenure or holding to a person who has occupied such a piece of land, however long may have been the period of his possession." So in *Prosunno Kumar v. Jugurnath*, 10 C. L. R., 25, it was held that, although where land is let for building *pucca* houses upon it, or where the tenant with the knowledge of the landlord does, in fact, lay out large sums upon the land in buildings or other substantial improvements, that fact, coupled with a long continued enjoyment of the property by the tenant or his predecessors in title, might justify a Court in presuming a permanent grant, specially if the origin of the tenancy could not be ascertained, yet the mere circumstance of a tenant occupying buildings upon property will not justify such a presumption, unless it can be shown that they were erected by him or his predecessors, because a landlord might let property of that kind as agricultural land at will or from year to year." (Garth, C.J., and Morris, J.) The course of these decisions has very much changed by the principle laid down in *Gobinda Chunder v. Aynuddin*, 11 C. L. R., 281. The Court (Garth, C.J., and Mitter, J.) observed: "In this case we think that there was quite sufficient ground to justify the Court below in presuming a grant of a permanent nature in favor of the defendants' ancestors. It is conceded that the land in question was never let for agricultural purposes. It was apparently let upwards of sixty years ago for building purposes; because it is found that after the grant (whatever it was), these buildings, which are of a substantial character, were erected some sixty years ago by the defendants' ancestors, and that they and their ancestors have lived there ever since. Under those circumstances we think the Courts below were at liberty to presume, if they thought fit, that the land was granted for building purposes, and that the grant itself was of a permanent character. This has been explained in several recent cases, and

amongst others in the case, to which our attention has been called, reported in 10 C. L. R., 25. If the land had originally been granted for agricultural purposes, then the defendants would probably have had another answer to the suit, namely, that they had acquired a right of occupancy. But as the circumstances under which the original grant was made, tend to show that it was made for building purposes, then the Courts below were at liberty to presume that the grant was of a permanent nature. In the case mentioned by the learned Judge (*Prosunno Kumari v. Rutton Bepary*, I. L. R., 3 Cal., 696), which he thought governed the case, it did not appear that the defendants or their ancestors had ever built upon the land or laid out any money upon it; indeed, it was found by the lower Courts in that case, that such kutcha buildings as were upon the land had not been erected by the defendants." But in *Arut Sahoo v. Prandhan Pykara*, I. L. R. 10 Cal., 502, the Court below did not raise the presumption of a permanent grant and the High Court did not interfere.

Notice to quit :—See s. 45, pp. 206—209 *ante*.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of custom.

Illustrations.

(1) A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

(2) The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage accordingly, wherever it exists, will not be affected by this Act.

Custom :—The Rent Commission remarked: "We have provided that nothing in the Bill shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions. The mode of proving custom is not very well understood in this country, and unfortunately, notwithstanding a dictum of Sir Barnes Peacock (see *Hills v. Iswar Ghose*, W. R., F. B. 156, and *Thakurani v. Biseswar*, B. L. R., F. B. 326) to the contrary, an idea got to prevail that Act X had superseded all customs, and was intended to do away with all agricultural rights, except those specially mentioned and provided for in that Act. We believe that there are many local customs, in this as well as in every other country, well understood by the people, recognized by the landlords, and susceptible of proof in the Courts of Justice, and we think it very desirable to make it clearly understood that the Bill is not intended to interfere with any of these, unless they have been expressly rescinded by, or are clearly inconsistent with, its provisions." In *Lachman v. Akbar*, I. L. R., 1 All., 440, the plaintiffs as zemindars sued their tenants for a declaration of their manorial rights as against all the tenants collectively to the plaintiffs of all trees of spontaneous growth, the fruit of mango, mohua, and appropriation by the other trees planted by the defendants, and of their right to receive a tribute of two ploughs annually, as also an offering of a certain quantity of poppy-seed, hemp, bhusa, cow-dung cakes, and other farm produce on the occasion of the marriage of the lower caste tenants, with a further right to levy as dues from

the said tenants a proportionate quantity of sugarcane juice prepared by each sugar manufactory, and the presentation of a certain number of sticks of sugarcane on a certain day in each year to the plaintiff. The High Court in remanding the case for further inquiry observed: "The most cogent evidence of custom is not that which is afforded by the expression of opinion as to the existence, but by the enumeration of instances in which the alleged custom has been acted upon, and by the proof afforded by revenue or judicial records or private accounts and receipts that the custom has been enforced." To prove a local custom, evidence must be precise and conclusive.—(*Tekait Durga Prosad v. Tekait Durga Kumar*, 20 W. R. 154). The custom must be of that part of the country where the tenancy is situate.—(*Annapurna v. Uma Charan*, 18 W. R. 55). Until some connection, either geographical or political, is shown to exist between any two districts, there is no ground for inferring the custom of one district from its existence in another.—(*Maharani Heyanath v. Burni Narain*, 17 W. R. 329). In *Kupil Rai v. Radha Prosad Sing*, I. L. R., 5 All., 261, it appeared that the defendants were occupancy tenants of certain lands, that those lands submerged and reappeared after some years, that the tenant neither relinquished nor paid rent for them; it was held that the claim of the landlord that he was entitled to them, according to a local custom, was not tenable with reference to the provisions of Act XII of 1881 (N. W. P. Rent Act). See *Luchmiput v. Sadatulla*, 12 C. L. R. In *Lala v. Hera Singh*, I. L. R., 2 All., 50, the claim was for the recovery of a cess which it was alleged was payable in accordance with the custom of the village on the second marriage of a widow of the Ramaiya caste. In dismissing the suit *Oldfield, J.*, observed: "Amongst the conditions essential for establishing a custom are that the custom is of remote antiquity, that it has been continued and acquiesced in, that it is reasonable and certain, and not indefinite in its character." *Stuart, C.J.*, concurred in the above view. (See also *Dwarkanath v. Hurish Chandra*, I. L. R., 4 Cal. 925, *Ram Luksmi v. Perumal*, 12 B. L. R., 396; *Hara Prosad v. Shiv Dayal*, 26 W. R., 55, B. C.; *Luchman v. Akbar*, I. L. R., 1 All. 440.) In *Chandra Kumar v. Pearee Lal*, 6 W. R., 190, it was held that a custom as to the transferability of *khodkast jotes* need not be absolutely invariable. According to the custom of the Hooghly District, a tenure granted for building purposes is transferable;—(12 W. R., 495). In an inquiry as to whether tenures of a certain class are transferable according to local custom, it is sufficient if there is credible evidence of the existence and antiquity of the custom, and none to the contrary; there is no necessity for the witnesses to fix any particular time from which such tenures became transferable;—(11 W. R., 348.)

As to custom see pp. 126—131 and 520 *ante*.

Usage :—It is doubtful if any distinction obtains in this country between usage and custom. The English law recognises the following distinction: "Usages known as customs of the country, although not customs, if strictly so called, are usages existing generally in a district, and will, unless expressly or impliedly included by the contract, be imported into and regulate contracts of tenancy, although the contract be in writing or in deed"—(*Wiglesworth v. Dallison*, 1 Smith, L. C., 598; See *Woodfall, L. and T.*, 707). In *Jugomohan v. Manik Chand*, 7 Moore, 263, their Lordships of the Judicial Committee observed: "There needs not the antiquity, the uniformity or the notoriety of custom, which in respect of all these becomes a local law. The usage may be still in its growth; it may require evidence for its support in each case; but in the result it is enough if it appear to be so well known and acquiesced in, that it may be reasonably presumed to have been an ingredient tacitly imported by the parties in their contract."

CHAPTER XVI.

LIMITATION.

184. (1) The suits, appeals, and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

Sub-section (1):—This section is controlled by section 185, and therefore

Suit.

these provisions are complemented by the definitions and provisions of the Limitation Act. The word "suit" therefore has been evidently used in the sense in which it has been defined in Act XV of 1877, viz., that it, "does not include an appeal or an application." So in Act IX of 1871: "We think that the word 'suits' in the Act of 1871 was not intended to include 'applications.' In the Act of 1859 the word might have had a more extended meaning, but in the Act of 1871 a distinction seems to have been carefully drawn between 'suits,' 'appeals,' and 'applications,' each of these subjects being separately dealt with, and in different divisions of the schedule"—(*Dhunessur v. Gridur Sahay*, I. L. R., 2 Cal., 336; see 9 W. R., 402; I. L. R., 1 All., 97). But in *Mungul Purshad v. Gria Kant*, I. L. R., 8 Cal., P. C., 51, an application for execution of decree has been held to be an application in the suit in which the decree has been obtained. Therefore a suit would include applications for execution; so in *Biharilal v. Gorbordhunlall*, I. L. R., 9 Cal., 446; see *Keratansi Kalanjie*, I. L. R., 2 Bom., 148; I. L. R., 10 Cal., 748. Act XV operates from the date on which it came into force as regards all applications made under it.—(*Behari Lall v. Goburdhan Lall*, I. L. R., 9 Cal., 446, dissented from.) An application for execution was made on the 2nd of March 1872. In the execution proceedings, certain properties were attached and a sale proclamation was issued. A claim to a portion of the properties was then preferred by third parties, and allowed on the 17th June of 1872. The decreeholder failed to take necessary measures to bring the remainder of the property to sale, and the case was struck off on the 4th of July 1872. A subsequent application for execution was made on the 14th June 1875. It was held that the subsequent application was not barred by the provisions of section 20, Act XIV of 1859. *Bond fide* proceedings in resistance of a claim to attach properties are proceedings to enforce a decree within the meaning of section 20 of Act XIV of 1859.—(*Becharam Dutta v. Abdul Wahed*, I. L. R., 11 Cal., 55).

Shall be instituted.—*Explanation* of section 4 of Act XV of 1877 which applies to this Act also by sub-section (2) of section 185 *post*, runs thus: "A suit is instituted, in ordinary cases, when the plaint is presented to the proper

officer; in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a company which is being wound by the Court, when the claimant first sends in his claim to the official liquidator." But this rule is modified by section 22 of Act XV of 1877, so far as it concerns *new plaintiffs or defendants* added after the institution of the suit, which also shows what is meant by the words 'ordinary cases' in the *Explanation* just referred to. Delay in the appointment of a *guardian ad litem* for a minor does not affect the date of institution—(I. L. R., 4 All., 37). When the plaint was really presented on the 29th July, it could not matter if the endorsement on the plaint stated that it was presented on the 31st July, or that it was *not accepted* until the later date—(Young v. MacCorkindale, 19 W. R., 159; see also 5 W. R., 207; 6 W. R., 39; 7 W. R., 157; 23 W. R., 447; I. L. R., 1 All., 260). The date of institution is the date of the first presentation of the plaint—(I. L. R., 4 All., 37). If the plaint is returned for insufficiency of stamp, or for any amendment, and then it is presented again within the time allowed or within a reasonable time, the date of the first presentation is the date of institution. The same remark applies to appeals. (See I. L. R., 2 All., 832, 875; I. L. R., 1 All., 260; 23 W. R., 447. See 7 W. R., 157, 241; 1 Mad. H. C. R., 427). It has been held by the Punjab Chief Court that an appeal is not presented within the meaning of the first para. of section 4 if it is not accompanied by the copies of decrees and judgment required by section 541 of the Civil Procedure Code—(See Rivaz, 16). Order admitting an appeal after time made *ex-parte* by a single Judge of the High Court sitting to receive applications for the admission of appeals under a rule of the High Court made in pursuance of 24 and 25 Vict. c. 166, section 13, and Letters Patent of the Court, section 27, is liable to be set aside at the hearing of the appeal by the Division Court, on the ground that the reasons for admitting the appeal were erroneous or inadequate—(2 B. L. R., 184; 4 B. L. R., 84; I. L. R., 1 All., 34). This reverses the decision in 8 W. R., 141. In 10 B. L. R., 155, it was held that the order was open to review. Under section 48 of the Civil Procedure Code, the plaint must be presented to the Court or *such officer as it appoints in this behalf* (see 6 Bom. 254). A plaint may not be presented at the private residence of the Judge or officer—(7 N. W. P., 5; *contra*, Suth. S. C. Cf. Ref., 36).

The word 'prescribed' has a technical meaning in the Act (*vide* cl. 15 of section 3, *ante*). In this section however that technical meaning cannot obtain. The word 'prescribed' here means prescribed by the Act as the context clearly shows.

This penalty must be enforced even if the defendant is willing to confess judgment—(Debi Narain v. Ishan, 13 C. L. R., 153, 155; Jaimal Sing v. Bhaga, Rivaz., 15). The point of limitation is one which, whether it be taken by the defendant or not, the Court is *bound* to entertain—(Ramey v. Broughton, I. L. R., 10 Cal., 652, 658; 2 Bom. H. C. R., 162; 2 Wym. Rep., 24). Instead of dismissing the suit, the Court may allow the plaintiff to withdraw his suit in order that he may proceed against the defendant in a foreign Court, where the law of limitation may not be the same as that of British India—(I. L. R., 6 Bom. 103, 107). The munsiff dismissed a suit as barred by limitation; the Judge on appeal set aside the munsiff's decision and remanded the suit for investigation on the merits. The munsiff then gave the plaintiff a decree in full; the Judge on appeal disallowed a part of the claim; the plaintiff appealed to the High Court. The defendant preferred a cross objection to the Judge's finding of fact as to the part decreed. The High Court is bound to consider the question of limitation, although it is not open to the respondents to take this objection themselves—(Ambalu v. Nadu Vakati, I. L. R., 6 Mad., 325. Compare 13 W. R., (F. B.), 44;

13 W. R., 52; 1 Agra 248; 3 Bom. H. C. R., 164; 1 B. L. R., 25; 7 W. R., 67; 4 Moo. I. A., 509; 14 W. R., 370). If the question of limitation has been decided (directly or indirectly) between the parties, it cannot be raised again in a subsequent stage of the same case—(*Mungal Pershad v. Grijja Kant*, 11 C. L. R., P. O., 113, also 11 C. L. R., 145). Remanding a case on appeal is indirectly or constructively determining that the suit is not barred by limitation—(*Morubin v. Gopalbin*, 1. L. R., 2 Bom., 120, 131). Judgment-debtor cannot raise the plea of limitation in respect of execution-proceedings under which his property has *already* been sold and purchased by a third party—(I. L. R., 6 Mad., 237; I. L. R., 10 Cal., 220). Where the defendant successfully pleads limitation, the suit must be dismissed *with costs*, even if the plea is used for the purpose of refusing to perform admitted obligations—(*Banning*, 283; L. R., 17 Eq., 75). Where, however, the defendant does *not* plead limitation at the first stage of the case, the Court may refuse to award costs to him—(I. L. R., 6 Mad., 178). Illustration (b) of section 4 of Act XV overrules *Bharrut v. Issur Chunder*, 8 W. R., 141. It runs thus: "An appeal presented after the prescribed period is admitted and registered. The appeal shall nevertheless be dismissed."

Sub-section (2):—The Bengal Act VIII of 1869 made a special provision of limitation for applications for review. The present Act does not reproduce it. Under the old Act an application for review, if not filed within 30 days of the judgment, would have been barred by the old law. Under the new Act, the Indian Limitation Act would apply to a case like this, and the applicant will get three months' time for filing his review. Suppose at the date of the commencement of the Act 30 days are over, under this sub-section the applicant is barred; but suppose at the date of the commencement of the Act, 29 days have only expired, this sub-section will not apply, and it may be argued that the applicant will get three months' time. But not so; we must read this section with section 6 of the General Clauses Act, and the old law will govern a case like this. *Vide* notes under sub-section (1) of section 2, pp. 19—23 and sub-section (2) of section 143. Compare sub-section (4) of section 2.

185. (1) Sections 7, 8, and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in the last foregoing section.

(2) Subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals, and applications mentioned in the last foregoing section.

Sub-section (1):—Section 7 provides that, if a person is a minor, insane, or an idiot at the time from which the period of limitation is to be reckoned, he may institute a suit or make his application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed by the law. Compare *Dinonath v. Roghoonath*, 5 W. R. (Act X, 41). Section 8 provides that when one of several joint creditors or claimants is under such legal disability and a discharge can be given without his concurrence, time will run against them all; but if such discharge cannot be given, time will not run against any of them, until one of them becomes capable of giving such discharge. Section 9 provides that when once time has begun to run, no subsequent disability or inability to sue stops it.

Sub-section (2):—*Subject to the provisions of this chapter.*—So section 6 of Act XV of 1877 provides: "When, by any special or local law now or hereafter

in force in British India, a period of limitation is specially prescribed for any suit, appeal, or application, nothing herein contained shall affect or alter the period so prescribed;" see section 6 of Act IX of 1871 and section 3 of Act XIV of 1859. These rules are founded upon the maxim *generalia specialibus non derogant*,—a general later Act does not repeal, control or alter an earlier special or local one by mere implication. Such an Act is presumed to have only general cases in view, and not particular cases which have been already provided for (Maxwell, 157). "The reason is that the Legislature, having had its attention directed to a special subject, and observed all the circumstances of the case and provided for them, does not intend, by a general enactment afterwards, to derogate from its own act, where it makes no special mention of its intention to do so"—(Unnoda Prosad v. Kristo Kumar, 19 W. R., 5, P. C.; The Collector v. Punriar, 1 Mad., 89, 110). It was accordingly held that the general law of limitation (Act XIV of 1859), in the absence of any express words or necessary implication, did not repeal or affect the limitation clauses of the Bengal Rent Law (Act X of 1859)—(Unnoda Prosad v. Kristo Kumar, 19 W. R., 5, P. C.; Paulson v. Modhu Sudan, 2 W. R., Act X, 21, F. B). Section 6 of Act IX of 1871 saved special and local laws, "now or hereafter to be in force," so that whether the general Act was later or not, its provisions could not be imported into any local or special law. And after the passing of that Act it was held that the provisions as to disability contained in that or any other Act could not apply to a suit under a special Act—(Thakur Kupitnath v. The Government, 13 B. L. R., 445; 22 W. R., 17). Similarly the provision in section 5 of Act IX as regards the period of limitation expiring on a day when the Court is closed, has been considered to be inapplicable to suits for arrears of rent under Act VIII of 1869 B.C.—(Paran Chunder v. Mutty Lall, 1 L. R., 4 Cal., 50; 2 O. L. R., 543). Act XV of 1877, however, has altered the law. It has been held by the Calcutta High Court that the language of section 6, Act XV of 1877, has introduced a change in the law.

The provisions of the Indian Limitation Act, 1877, shall apply to all suits, &c.

Under Act IX of 1871 the rule was that local and special laws of limitation were not to be affected by the general law, but under Act XV of 1877, the rule is that the periods of limitation prescribed by special or local laws shall not be altered or affected by the general law. This raises an inference that the Legislature intended that the general provisions and exceptions contained in Act XV of 1877 should be applicable to suits, appeals, or applications governed by special or local laws of limitation. Accordingly the general provision of section 5, Act XV of 1877 (as regards the period of limitation expiring on a day when the Court is closed), has been applied to suits under Act VIII of 1869 B.C.—(Gopal Chand v. Kristo Chunder, 1 L. R., 5 Cal., 314; Khosel v. Gunesh Dutt, 1 L. R., 7 Cal., 690). Similarly, the general provisions of section 12, Act XV (as to exclusion of time occupied in obtaining copies of decrees, &c.), and of section 19, Act XV (as to acknowledgment of liabilities) have been considered applicable to applications and suits under Act VIII of 1869 B.C.—(Biharilal v. Mangalanath, 1 L. R., 5 Cal., 110). In the report of this case a similar ruling of Sir Richard Garth is referred to. See Parbatinath v. Tejmoey, 1 L. R., 5 Cal., 303. But as these general provisions and exceptions modify the periods of limitations prescribed by local and special Acts, they may be said to 'affect,' if not to 'alter,' those periods. And although the corresponding section of Act XIV of 1859 (section 3) referred to the periods of limitation only, the general provisions of that Act were held by the Privy Council to be inapplicable to suits for which a shorter period of limitation had been prescribed by a special Act—(Unnoda Persaud v. Kristo Koomar, 19 W. R., 5, P.C.; Mahomed Bahadoor v. The Collector, 21 W. R., 381, P.O. See also Hariram v. Vishnu, 10 Bom.,

204.) Besides, under the well-established rule of construction to which we have referred, a mere *inference*, unless it is a necessary one, is not sufficient to rebut the presumption that the Legislature does not intend by a general enactment to interfere with a special one—(19 W. R., 5, 6, 7, P. C.) On the other hand, it should be remembered that Act XV expressly provides (see section 1) that sections 2 to 25 shall not apply to suits under two *particular* special laws, *viz.* Act IV of 1869 and Mad. Regulation VI of 1831. From this it would seem that the Legislature intended that to suits under other special laws, those sections may, as far as possible, apply. Hence in *Ram Raw v. Venkatisa*, I. L. R., 5 Mad., 171, F. B., the Judges of the Madras High Court were of opinion that section 19, Act XV of 1877, was applicable to summary applications under special and local laws, such as the Acts regulating the rights of landlord and tenant in the North-Western Provinces and in Bengal. *Query*—If the general provisions of Act XV are applicable to suits and application under all special and local laws, why has the Legislature *expressly* extended those provisions to suits under Act XVIII of 1881 (see section 23, Act XVIII of 1881, the Central Provinces Land Revenue Act.)

The general provisions of the Limitation Act are contained in sections 5—25. For decisions under those sections, the reader is referred to the author's *Indian Limitation Act*.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

Penalties for illegal interference with produce.

- (a) distrains or attempts to distrain the produce of a tenant's holding, or
- (b) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or
- (c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing, or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

(2) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Sub-section (1):—The punishment under section 447 of the Penal Code for these offences is imprisonment of either description for a term which may extend to three months, or fine which may extend to five hundred rupees, or both.

Sub-section (2):—See sections 109 and 116 of the Indian Penal Code.

Agents and representatives of landlords.

187. (1) Any appearance, application or act, in, before or to any Court or authority, required, or authorised by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

Sub-section (1):—This certainly modifies sections 10 and 20 of "The Legal Practitioners' Act," XVIII of 1879, which prohibits persons from *practising* unless they have obtained a certificate under the Act. A difference, however, exists even under the Legal Practitioners' Act between acting for one landlord in the case concerned with his estate, and acting for all employers. Under this sub-section, however, one agent may be employed by several landlords. The *gomasthas* cannot, however, sue in their own name.

188. Where two or more persons are joint-landlords, anything which the landlord under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

See sections 93 to 100. As to the right of one co-sharer to make a survey and measurement, see sections 90, 92, and notes; also 10 B. L. R., 397; 19 W. R., 280; 20 W. R., 385; 9 C. L. R., 444; 1. L. R., 7 Cal., 684;—to enhance rent, see sections 27—37, and notes; also 2 C. L. R., 370; 1. L. R., 4 Cal., 96; 5 C. L. R., 545; 9 C. L. R., 37; 1. L. R., 7 Cal., 633; 10 C. L. R., 331; 1. L. R., 4 Cal., 96, 592; 1. L. R., 5 Cal., 273, 574; 1. L. R., 7 Cal., 633, 751; 1. L. R., 8 Cal., 353; 1. L. R., 9 Cal., 864;—to eject, see sections 44, 66, and 89 and notes; also 9 C. L. R., 76; 12 C. L. R., 223; 1. L. R., 4 Cal., 961;—to sue for his share of rent separately, see section 65 and notes, and also notes that precede.

ed that section under the heading *arrear of rent*; also 5 W. R., (Act X), 65; 15 W. R., 243; 19 W. R., 168; 20 W. R., 76; 22 W. R., 229, 394; 23 W. R., 11; 25 W. R., 25; 3 B. L. R., A. G., 230; 12 B. L. R., 289, 290, note, 291 note; 3 C. L. R., 223; 8 C. L. R., 445; 1 L. R., 4 Cal., 90, 350, 556; 1 L. R., 5 C., 915, 941; 1 L. R., 7 Cal., 150; 1 L. R., 8 Cal., 277.

Suits for arrears of rent by co-sharers.—This section has caused some agitation and is no doubt a hard nut to crush. Some commentators have argued that it has over-riden all the decisions that have ruled that a separate suit would lie, when a co-sharer has collected rent separately. It appears to me that this was never the intention of the Legislature. "Joint-landlords" in this

"joint-landlord" means joint in collection of rent.

section should be read as landlords not only joint in estate but also in the collection of rent. Co-sharers collecting rent separately would not therefore be joint-landlords. It should be recollected that the decisions under the old Act proceeded upon the principle that when it has been arranged between the co-sharers of an estate and their tenant, that he shall pay each co-sharer his proportionate share of the entire rent, that was an arrangement or a contract upon which a separate suit for such proportionate share should lie. I submit that the same principle still applies.

1st.—Because no body will deny that when there is a separate arrangement or contract, the principle of *ubi jus ibi remedium* (where there is a right, there is a remedy) would give the party a right to sue upon such contract (section 11 of the Civil Procedure Code.)

2ndly.—It is a contract which is not prohibited by the Bengal Tenancy Act, Chapter XV of the Act is headed *Contract and Custom* and prescribes restrictions upon agreement. In this chapter while many cases are provided for, in which contracts and agreements against the provisions of the Act are prohibited, the case of a separate suit by co-sharers collecting rent separately is not mentioned.

Such contract is not prohibited.

If section 188 meant any thing of the kind now contended for, a prohibitory clause restricting contracts by separate collection would have surely found place in chapter XV.

3rdly.—On the contrary, the definition of the words "landlord" and "tenant" contemplate such contracts. The word "landlord" means "a person immediately under whom a tenant holds and includes the Government;" and the word "tenant" is defined to mean "a person who holds land under another person, and is or but for a special contract would be liable to pay rent for that land to that person." It should be observed that it is upon this definition mainly (with sections 53 and 54) that the right of the landlord to collect rent from his tenant rests. If

But is encouraged by the Act.

so, the very definition of tenant shows that where there are joint-landlords, he (the tenant) is not liable to pay his whole rent to them, when there is a special arrangement or contract to the contrary; e.g., when he has made a special contract with a co-sharer to pay his proportionate share of rent separately.

4thly.—The form of a suit (because that is the real question, e.g., whether all the co-sharers collecting rent separately should sue together or separately) is a question of procedure, and under chapter XIII of the Act which provides for *Judicial Procedure*, no special provision is made for the case under consideration. Hence it may be fairly argued that the Code of Civil Procedure will govern this question, and it was not the intention of the Legislature to provide by section 188 a matter of procedure which ought to have found place in chapter XIII.

The question involves a rule of procedure and ought to have found a place in chapter xiii, if the Legislature meant to insist upon a joint suit.

5thly.—The words “do” and “act” in section 188 and section 187

The words “do” and “act” never meant to include a suit, because in that case, an “act” do not include a suit. agent will be entitled to sue. (Vide Mokha Hurukraj v. Bissesvar 13 W. R., 344; Kunjo Behari Roy v. Purna Chunder Chatterji, 12 C. L. R., 12). It should be remembered that the word “act” occurs in section 36 of the Civil Procedure Code and there too it has been held that it does not include a suit. Compare the meaning given to the word “transact” in Gujjulal’s case.

6thly.—The history of the provision under consideration does not warrant

History of sections 187, 188 shows that separate suit would lie.

the contention of a joint suit by co-sharers collecting rent separately. The original section (s. 69) as drafted in the Rent Commission Bill ran to the following effect:

“Except in cases hereinafter excepted, rent payable to coparceners shall be paid upon the joint receipt of all such coparceners, or where a manager has been appointed by them or by the District Judge, upon the receipt of such manager; and all such coparceners must be made parties to any suit brought for the recovery of arrears of any such rent. Any such suit brought by one or more coparceners, and not by all, or to which all have not been made parties* shall be dismissed with costs.

“Exception 1.—When an agreement has been made between a tenant and one or more of several coparceners with the consent of the other or others of them that the share of rent to which such one or more coparceners is or are entitled shall be paid directly to him or them, such share of rent shall be so payable and recoverable.

“Exception 2.—When a tenant has usually paid to one or more of several coparceners without objection from the other or others of them, the share of rent to which such one or more coparceners is or are entitled, such share of rent shall be so payable and recoverable.

“Exception 3.—When a coparcener is unable to obtain his share of the rent payable by a tenant in consequence of collusion between such tenant and the other coparcener, he may sue to recover his share of rent separately, or shall in such suit make such other coparceners defendants.”

And the Commission reported (vol. I, p. 62) “We have taken these exceptions from cases actually decided, and we consider that they are proper exceptions to the rule and that the law as here settled by the decisions ought not to be altered.”

So section 150 of the Rent Commission Bill said:—

“150 (a). Every Naib or Gomashta there-to specially empowered by a written authority under the hand of his employer shall, for the purpose of all such suits as are mentioned in section 149, be deemed to be the recognized agent of such employer within the meaning of sections 36, 37, and 38 of the Code of Civil Procedure, notwithstanding that such employer may be within the local limits of the jurisdiction of the Court in which any appearance, application, or act is made or done by such Naib or Gomashta. Any such suit shall, nevertheless, be instituted and conducted in the name and on behalf of such employer.

* The practice in India is to make *pro forma* defendants those persons who have co-existent rights with the plaintiffs to sue, but who refuse to join as plaintiffs, the fact of this refusal being stated in the plaint. As to the practice in Courts of Equity in England, which has not been materially altered by the Rules under the Judicature Act, see Daniell’s Chancery Practice, Vol. I, pp. 772, 186; see sections 26 and 30 of the Code of Civil Procedure and consider the expression “with the permission of the Court,” in the latter section.

"(b). Every notice which may under any of the provisions of this Act be served upon, and every sum of money or fee which may under any of the provisions of this Act be tendered to a landlord, may be served upon, or tendered to, any Naib or Gomashta of such landlord empowered in the manner and for the purpose mentioned in clause (a); and such service or tender shall be as effectual as service upon, or tender to such landlord himself."

Section 69 of the Rent Commission Bill was omitted in the Bengal Tenancy Bill No. 1, but section 150 was reproduced in section 229 of the Bill as follows:-

"Any appearance, application or act in, before, or to any Court or other authority required or authorized by this Act to be made or done by a landlord may, unless the Court or authority otherwise directs, be made or done also by a Naib or Gomashta of the landlord empowered in this behalf by a written authority under the hand of the landlord, and every notice required by this Act to be served on, or given to, a Naib or Gomashta of the landlord empowered as aforesaid to accept service of, or receive the same, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person."

The Bengal Tenancy Bill No. II then provided:

"221. (1) Any appearance, application or act in, before, or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent of the landlord empowered in this behalf by a written authority under the hand of the landlord.

"(2). Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent of the landlord empowered as aforesaid to accept service of a process, be as effectual for the purpose of this Act as if it had been served on, or given to, the landlord in person.

"(3). Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

"222. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them."

And the Select Committee remarked:—"We have somewhat amplified the provisions of section 211, which empowers a landlord to act through his agent, and in order to remove a misapprehension which, notwithstanding the definition of "landlord" contained in the Bill, we have found to exist in some quarters, we added a section (222) to make it clear that, when two or more persons are joint-landlords, they must act together or through an agent, appointed by them jointly." "Landlord" in this Bill was defined to mean "a person or a number of persons immediately under whom a tenant holds."

The Bengal Tenancy Bill No. III and the Act adopted the sections of Bill No. II in their entirety.

Now it is clear from the above (1) that the Rent Commissioners did not contemplate the necessity of a joint suit when co-sharers collect rent separately; on the contrary they expressly provided by section 69 of their Bill that when co-sharers collect rent separately, they are entitled to bring separate suits. 2ndly, that when the Bengal Tenancy Bill No. I was introduced, it was not thought necessary that any provisions should be made for this case—a fact from which it may be inferred that the Legislature was satisfied to leave this case as it was, i. e., to be guided by the Case Law, and that when Bill No. II was introduced it was furthest from the intention of the Legislators to contemplate the case

of a joint suit for rent by co-sharers collecting rent separately by section 222. In order to show this, we have to read carefully section 187 of the Act, and its history. In the corresponding section (158) of the Rent Commission Bill, we find a desire in the Legislature of giving power to the landlord to act through his agent. In clause (a) the gomashtha was made a recognised agent and "*any appearance, application or act*" made by him bound the landlord. But it is expressly guarded that he cannot sue in his own name. Hence the word '*act*' was used in a special sense and did not include a '*suit*.' By clause (b) he may be served with notice or tender of rent may be made to him. Clause (a) gave facility to the landlord, and clause (b) to the raiyat. The Commissioners observed: "We have retained the provisions of the existing law as to naibs and gomashthas, if specially empowered thereto, acting as the authorized agents of their employers, although such employers are resident within the local limits of the Court's jurisdiction. We think that the facility thus afforded to landlords is a reasonable one, which should not be taken away. At the same time we have thought it equally reasonable to provide in the interests of the raiyat that the service of any notice under the Act upon such naib or gomashtha, or the tender to him of any money or fee, shall be as valid a service or tender as if the service had been made upon, or the amount of fee tendered to his employer." (Vol. I., 74)

The Bengal Tenancy Bill No. I adopted that section, but did not mention the case of tender to a gomashtha, because it may have been thought that the word "*act*" in the sentence "*appearance, application or act*" would include that case. Bill No. II followed in the same strain (vide section 221) but made an amplification. Section 221 provided that gomashtha may enter appearance, apply or act (but not sue) like his principal, the landlord; section 222 then said that when that principal consisted of a collective body, *i. e.*, when there are joint landlords, they must act through a common agent. This is indeed the main object of section 187 of the Act.

7thly. The words "*authorized or required*" to do under this Act, obviously do not cover the case of suit; because a suit for rent is not authorized or required by this Act. The right of a landlord to recover rent is a right which he can enforce under the ordinary Civil law of the country (see s. 11 of the Civil Procedure Code.)

8thly. Section 188 has no sanction or penalty attached to it and is therefore innocuous. It will not prevent co-sharers from suing for rent separately. The section says that all landlords must act together. Let us suppose,

for the sake of argument, that it means that they must sue together, but it does not say what will be the penalty if they do not do so. It does not say that if the landlords do not comply with this section, their suit must be dismissed.* This is very significant when we compare this section with section 69 of the Rent Commission Bill, which expressly provided dismissal of such suits, when they did not fall under the exceptions. If the Legislature meant to provide that co-sharers collecting rent separately must sue together, nothing was easier than to attach a penalty to the section.

Against this argument it has been observed that it cuts both ways. If the

* This argument is like that of Mr. Justice Markby in *Nobin Kishen Mukerji v. Shri Pershad Patak*, 8 W. R., 96, upon the registration of tenures (section 26 of the old Act) in which he says, "I cannot assume that because the Legislature has not expressly provided a penalty, therefore this severe one of forfeiture was intended."

section has no penalty in case of co-sharers collecting rent separately, so it has none for co-sharers collecting rent jointly, and that the argument will apply to cases of ejectment, and enhancement of rent, &c. My answer is that that does not at all affect my position. If the section is innocuous or worthless, joint landlords or co-sharers will be governed by the current Case Law, and a close inspection of the Act will shew that except sections 93-100, the new Act does not improve upon the old law. It is not correct to say that section 56 enjoins co-sharers collecting rent separately to give a joint receipt; no such contention can be based upon that section itself, and to interpret it by section 188 (which is the starting point of our discussion) is to argue in a circle. Moreover clause (c) of section 61, clearly shows that a joint receipt can be claimed only *when the rent is payable to co-sharers joint and not otherwise*. So it is not correct to say that sections 6, 30, 43, 48, and 52 make any new provisions for a joint suit for enhancement of rent, or sections 10, 18, 20, 44 and 49 for ejectment, or section 80 for a joint application for registration of improvements and so on. No doubt a joint suit in these cases is insisted upon by the current decisions on principles of equity and justice, but what I mean to say is that the new Act does not provide anything more than what used to be the law.

9thly. I should say the theory that all co-sharers collecting rent separately must join to sue, logically, under the wordings of section 188, leads to the conclusion that all co-sharers must collect rent jointly too. This would be too shaky a position to maintain, because persons being co-sharers who have collected rent separately for years will have now to retrace their steps and join together to collect rent. What a confusion and harassment would such a thing bring on! Could the Legislature mean to introduce a confusion of this kind?

10thly. If the section be strictly construed, it would mean that even in case of collusion between one co-sharer and the tenant, others must get him to join them in a suit for rent,—which would be impossible.

In *Premchand Nuskur v. Mokshoda Devi*, I. L. R., 14 Cal., 201, it has been held by Justices Prinsep and Beverly that section 188 of the Bengal Tenancy Act, applies only to such matters as a landlord is, under the Act, authorized or required to do; there is nothing in that Act which requires or authorizes a landlord to sue thereunder for arrears of rent. Also that one of several joint landlords is competent to sue for the entire rent due from a tenant making his co-sharers parties to the suit.

Rules under Act.

189. The Local Government may, from time to time by notification in the official Gazette, make rules consistent with this Act—

Power to make rules regarding procedure, powers of officers and service of notices.

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(a) any power exercised by a Civil Court in the trial of suits;

- (b) power to enter upon any land, and to survey, demarcate, and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875; and
- (c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil; and

(2) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.

For rules prescribed by Government under this section, see pp. 401—420.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons

Procedure for making publication and confirmation of rules

likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may, in its opinion, be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the section (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.

191. When the area comprised in a tenure is situate in an estate which has never been permanently

Saving as to land held in a district not permanently settled.

settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold

beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

This is a reproduction of the old law. See *Supplement to Gazette of India*, 9th May 1885, pp. 789—791.

On the Hon'ble Baboo Peary Mohun Mookerji's pointing out that the effect of this section will be to exempt a large majority of Government estates from the operation of the rule of twenty years' presumption, the Hon'ble Sir Stuart Bayley said: "I think we have a right to complain of the repetition of the statement that the Government has made a separate law for Government estates from other estates. There is no such distinction in reality; all temporarily-settled estates will be exactly in the same position; there is no distinction between the Government and any other proprietor, and the assertion that the Government has made a separate provision for their own estates is simply misleading. The rules to which the Hon'ble gentleman objects will apply to all lands by whomsoever held in districts which are not permanently settled. The history of the matter is that it is a part of the existing law which provides that the temporary settlement-holder could not contract beyond the term of his own settlement; a settlement-holder therefore cannot protect his raiyat against subsequent enhancement in case of the subsequent enhancement of the revenue. That is the law, and it is practically repeated in this section. Then we come to the question of the presumption from twenty years, holding at an unchanged rent. The presumption cannot possibly arise where the revenue, and presumably the rent, is being constantly changed. I do not think the question could be better stated than as it has been formulated by the Rent Commissioners' Bill. The exception to section 6 of that Bill says: 'In the case of a tenure or under-tenure situate in an estate not permanently settled, such presumption shall not operate to prevent the enhancement of the rent of such tenure or under-tenure upon the expiry of a temporary settlement of the revenue, unless the right to hold such tenure or under-tenure for ever at a fixed rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by Government to make definitively or confirm settlements.' That is to say, where a person has held from the time of the Permanent Settlement there he has a right to go on holding at the same rent, but where you have the rent constantly changed, the presumption does not naturally arise that he has held from the Permanent Settlement. It is no idea of our own."

192. When a landlord grants a lease, or makes any other

Power to alter rent in case of new assessment of revenue.

contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

(a) land-revenue is for the first time made payable in respect of the land, or

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the

landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Rights of pasturage, &c.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

*Rights of pasturage,
forest-rights, &c.*

This section reproduces and extends clause 4 of section 23 of Act X of 1859—*Vide notes*, pp. 26-29.

Pasturage.—A right of occupancy may grow in land used for grazing horses—(*FitzPatrick v. Wallace*, 11 W. R., 231).

Fisheries.—The right to a julkur by no means involves a right to the soil—(*Radha Mohan v. Nil Madhub*, 24 W. R., 200; *David v. Grish Chunder*, 1. L. R., 9 Cal., 183). But there is no broad proposition of law, as that the settlement of a julkur implies no right in the soil—(*Rakhal Churun v. Watson & Co.*, 1. L. R., 10 Cal., 50). No right of occupancy can be acquired in a julkur or fishery—(*Umakanta v. Gopal Singh*, 2 W. R., (Act X), 19; *Juggobundhoo v. Promotho*, 1. L. R., 4 Cal., 767). The right of occupancy does not accrue in a tank used only for the preservation and rearing of fish—(*Gopal Chunder v. Shiba*, 19 W. R., 200). A right of occupancy is not acquired in a tank when the tank is the principal subject of the lease; but where land is let for cultivation and there is a tank upon it, the tank would go with the land, and if there was a right of occupancy in the land, there would be a right of occupancy in the tank as appurtenant to the land—(*Nidhy Krishna v. Ram Doss*, 20 W. R., 341; *Sham Narain v. The Court of Wards on behalf of the Rajah of Durbhungah*, 23 W. R., 432). Proof of acts of misappropriation of fish in the *bhils*, unless done by a person or defined number of persons, even if such acts had the power of depriving the owner of a property wholly of its profits, would not amount to dispossession of the owner; nor would it confer a prescriptive right of fishery on the defendants—(*Luchmiput v. Sadatullah*, 12 C. L. R., 382). But where the defendants were ascertained persons who under a claim of right adverse to the plaintiffs continuously exercised the right of taking fish from a *bhil* for more than 12 years, it was held that the plaintiffs' claim was barred by limitation. It was further held that a julkur was not an easement within the meaning of section 27, Act IX of 1771—(*Parbutty Nath v. Madhoo*, 1 C. L. R., 592). A party owning the right of fishery in a river from the time of the Permanent Settlement is at liberty to exercise that right in the open channels, and also in all closing or closed channels abandoned by the river up to the time when the channels became finally closed at both ends, *i. e.*, so long as fish can pass to and fro—(*Krisnendra Roy v. Maharani Surnomoyee*, 21 W. R., 27). In the case of *Kali Soundor v. Dwarka Nath*, 18 W. R., 460, it was held that if the inlets to such channels were dried up, and the defendants acquired a right to the land by the law of accretion, that right would be subject to the exercise by the plaintiffs of their prior right of fishery. The right of fishing in a navigable river does not belong to the public, nor is the Government prohibited by law from granting to individuals the exclusive right of fishing in such a river—(*Chunder v. Ram Chunder*, 16 W. R., 212). The exclusive right of fishery in tidal navigable rivers may be granted by the Crown to private individuals, such a right must ordinarily

be proved either by proof of a direct grant from the Crown or by prescription. In the absence of title by grant or prescription in persons alleging themselves to be the holders of a julkur under an ijara, the mere payment of rent by fishermen to former ijaradars does not estop such fishermen from disputing the rights of the alleged holders; but such payment for the use of the julkur right is strong evidence of the rights of the alleged holders of the ijara and of acquiescence in their title—(*Hori Das v. Mahomed Jaki*, 1. L. R., 11 Cal., 434, F. B.).

No road cess upon julkur.—Road cess and public works cess cannot be charged on any julkur—(*David v. Orish Chunder Guho*, 1. L. R., 9 Cal., 183).

Saving for conditions binding on landlords.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

Tenant not enabled by Act to violate conditions binding on landlord.

Saving for special enactments.

Savings for special enactments.

195. Nothing in this Act shall affect—

- (a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;
- (b) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;
- (c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;
- (d) any enactment relating to the partition of revenue-paying estates;
- (e) any enactment relating to patni tenures, in so far as it relates to those tenures; or
- (f) any other special or local law not repealed either expressly or by necessary implication by this Act.

Sub-section (a).—See Regulations VII of 1822, IX of 1825, and IX of 1832.

Sub-section (b).—See Act VII (B. C.) of 1868, and Act VII (B. C.) of 1880, “The Public Demands Recovery Act.”

Sub-section (c).—See sections 37 and 52 of Act XI of 1859 and 11 and 12 of Act VII (B. C.) of 1868: Act II (B. C.) of 1871. Compare *Koylash Bashini Dossee v. Gocool Moni Dossi*, 1. L. R., 8 Cal., 230.

Sub-section (d).—See Act VIII (B. C.) of 1876, “The Estates Partition Act.”

Sub-section (e).—See Regulation VIII of 1819.

Sub-section (f).—A special law is defined in the Indian Penal Code to be a law applicable to a particular subject, and a local law to be a law applicable only to a particular part of British India. See "The Chota Nagpore Tenures' Act," II (B.C.) of 1869; "The Chota Nagpore Landlord and Tenant Procedure Act" (B.C.) of 1879; "The Hooghly and the Burdwan Drainage Act," V (B.C.) of 1871, section 33; "The Bengal Embankment Act" VI (B. C.) of 1873, sections 49, 451; "The Bengal Survey Act" V (B. C.) of 1875, section 38; "The Bengal Irrigation Act" III (B. C.) of 1876.

Construction of Act.

Act to be read subject to Acts hereafter passed by the Lieutenant-Governor of Bengal in Council.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

Vide notes, pp. 13 and 14—15 ante; section 42 of the "Indian Councils' Act, 1861," 24 and 25 Vict. Cap. 67. Section 42 empowers the Lieutenant-Governor of Bengal to repeal and amend any laws or regulations made prior to the coming in operation of the Act by any authority in India. It therefore does not seem to confer upon him the power of repealing and amending any Act made by the Governor-General in Council after the coming into operation of the Councils' Act. It is only the Governor-General's Council which can repeal or amend any of the provisions of the Tenancy Act, and it cannot delegate its legislative powers. This section seems, therefore, to be ultra vires; otherwise the Bengal Council may on any day pass an Act that it repeals or suspends the provisions of the Bengal Tenancy Act, and the effect would be the same as if it were legislating like the India Government. The Governor-General in Council may, however, withhold his assent to any such law under section 40 of the India Council Act, 1861. As to the distinction between conditional legislation and the delegation of legislative power, see L. R., 5 I. A., 178.

SCHEDULE I.

(See section 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and Year.	Subject of Regulation.	Extent of repeal.*
VIII ^a of 1793 ...	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zemindars, independent talukdars and other actual proprietors of land in Bengal, Behar, and Orissa, passed for those Provinces respectively on the 18th September 1789, the 25th November 1789, and the 10th February 1790, and subsequent dates.	Sections 51, 52,* 53, 54, 55, 64, and 65.
XII of 1805 ...	A Regulation for the settlement and collection of the Public Revenue in the zilla of Cuttack, including the pergunnahs of Pattaspur, Kummadichour, and Bagrae, at present included in the zilla of Midnapur.	Section 7.
V of 1812 ...	A Regulation for amending some of the rules at present in force for the collection of the Land revenue.	Sections 2, 3, 4, 26, and 27.
XVIII of 1812 ...	A Regulation for explaining section 2, Regulation V, 1812, and rescinding sections 3 and 4, Regulation XLIV, 1793, and sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI of 1825 ...	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

* The most important repeal is of sections 52 and 53.—See the footnote at the next page. (See the Introduction.)

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862 ...	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	*The whole Act.
IV of 1867 ...	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869 ...	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.†
VIII of 1879 ...	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Act of the Governor-General in Council.

Number and year.	Subject of Act.	Extent of repeal.
X of 1859 ...	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	*The whole Act.†

"52. The zemindar or other actual proprietor of land is to let the remaining lands of the zemindari or estate under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land or any farmer of land of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this section are the following:—

"53. No person, contracting with a zemindar, independent talukdar or other actual proprietor, or employed by him in the management of the collections shall be authorized to take charge of the lands or collections without, an amilnama, or written commission, signed by such zemindar, independent talukdar or other actual proprietor."

* These Acts are still in force in the Division of Orissa. See section 8 of the Tenancy Act.

† Most of the important provisions of these Acts have been quoted under the corresponding sections of the Bengal Tenancy Act. See the Comparative Table.

(Schedule II.—Forms of Receipt and Account.)

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

(See sections 56 and 57.)

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION).

1. Serial number of Receipt
2. Estate ; Village ; Tháná
3. Tenant's name ; Son of
4. Particulars of the holding—
Nuká, Bighás ; rent Rs.
Baoli, Bighás ; Maunds ; or Rs.

{ Jalkur, Rs.
Bunkur, Rs.
Phulkur, Rs.

Govt. Cesses { Road Cess, Rs.
Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (TENANT'S PORTION).

1. Serial number of Receipt
2. Estate ; Village ; Tháná
3. Tenant's name ; Son of
4. Particulars of the holding—
Nuká, Bighás ; rent Rs.
Baoli, Bighás ; Maunds ; or Rs.

{ Jalkur, Rs.
Bunkur, Rs.
Phulkur, Rs.

Govt. Cesses { Road Cess, Rs.
Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent

Section 55 of the Bengal Tenancy Act, 1885, provides as follows:—

- (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.
- (2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Details of Payments (Tenant's Portion.)

[illegible]

(Schedule II.—Forms of Receipt and Account.)

FORM OF ACCOUNT.

FORM OF ACCOUNT.

1. Year	1. Year
2. Tenant's name	2. Tenant's name
3. Particulars of holding—(area rent, &c.)	3. Particulars of holding—(area, rent, &c.)
Rs. A. P.	Rs. A. P.
<i>Nukdi</i>	<i>Nukdi</i>
Government Cesses	Government Cesses
Bighás	Bighás
Maunds	Maunds
Rs. A. P.	Rs. A. P.
<i>Baoli</i>	<i>Baoli</i>
Julkur	Julkur
Bunkur	Bunkur
Phulkur	Phulkur
Rs. A. P.	Rs. A. P.
4. Demand of the year	4. Demand of the year
5. Balance of former years (Bakaya)	5. Balance of former years (Bakaya)
Rs. A. P.	Rs. A. P.
6. Total demand (current and arrear)	6. Total demand (current and arrear)
7. Paid each on account of	7. Paid each on account of
Arrear demand	Arrear demand
Maunds	Maunds
8. Paid in kind	8. Paid in kind
Rs. A. P.	Rs. A. P.
9. Balance outstanding at end of year	9. Balance outstanding at end of year
10. Signature of the Landlord or his authorized Agent	10. Signature of the Landlord or his authorized Agent

N. B.—*Particulars of the holding*, at the heading of the receipt as well as in sub-heading 4, do not mean any particulars as to the incidents of the tenure such as *mokurari* or *ticca*, but mean the particulars that are given below, *e. g.*, sub-heads 1 to 5 in one case, and *nukdi*, *bhaoli*, *julkur*, *bunkur*, *phulkur*, and Government cesses in the other case. The details of payment, *e. g.*, the date of payment, and the name of person through whom paid, for current year or past years, &c., are to be given on the back. Under clause (e) of s. 195 of the Bengal Tenancy Act, nothing in that Act shall affect any enactment relating to *patni* tenures. It is not, therefore, incumbent upon a *zamindar* to give receipts to a *patnidar* according to this form, though if he chooses he may adopt it. Under section 53, if the tenant has made an agreement, rents will be due from him according to the instalments therein mentioned. If there be no agreement but established usage which regulates the instalments according to which rents are paid in the estate, they will be payable according to such usage. If there be neither agreement nor established usage, then the rents will be payable in four quarterly instalments of the agricultural year, *i. e.*, in Bengal, one-fourth on the last day of *Asar*, one-fourth on the last day of *Assin*, one-fourth on the last day of *Pous*, and one-fourth on the last day of *Choitra*. In Behar the agricultural year commences in *Asar*, and the last days of every quarter commencing from the first of *Asar* will be the days on which rents are due. In all cases interest under section 67 will have to be calculated only from expiration of every quarter, any stipulation to the contrary notwithstanding. For example, supposing the yearly rent of A, a tenant, is Rs. 100, and he does not pay during the year, his accounts in the landlord's office will stand thus:—

In Bengal due on 30th Asar	...	...	...	Rs. 25	0
Interest from 1st to 30th Shrawan at 12 per cent.	...	...	...	"	0 4
Ditto from 1st to 30th Bhadro	...	...	...	"	0 4

and so on; apply the rule to Behar.

The particulars to be inserted in the receipt to be granted to a tenant are:—

- (1) Serial number of the receipt.
- (2) "Estate" means the particular lot or mehal in which the holding is situate, not the *pargana* or the *kismut* of which it may form a part; thus, if *pargana* Sultanahad be a large estate, and B takes a *patni* of two villages in it calling them Lot X, Lot X will have to be mentioned in the receipt. (Sub-section 1 of s. 3.)

"Village."—Sub-section (10) of section 3.

"Tenant's name," *i. e.*, the registered tenant.

"Particulars of holding," *i. e.*, *nukdi* or *bhaoli*, *julkur*, *bunkur*, *phulkur*, and Government cesses; where any one of these items would be wanting, it should be written *nil*. The common element of all the items is the total in rupees. Where the exact area comprised in the tenant's holding is not known, it is advisable not to state it, and the landlord under sub-section (3), section 56, is required to insert only such particulars as he "can specify at the time of payment." Under the former system the *gomashita* or *naiab* used to sign receipts, but according to the provision of section 56, sub-section (1) the receipt is to be "signed by the landlord"; under sub-section (3), section 187, however, "an authorized agent" may sign.

So under section 181 this Act does not apply to *ghatwali* and *service tenures*; therefore these receipt forms need not be adopted with respect to them as a matter of necessity. As to homesteads, if their incidents are governed by local custom, the customary forms of receipts will obtain (s. 182).

The Local Government has published the following resolution on the 30th January 1888:—"Under the proviso to section 56, clause 3 of the Bengal Tenancy Act VII of 1885, the Lieutenant-Governor is pleased to sanction the form of rent receipt annexed to this notification for the areas specified below until further orders.

"Specifications of Areas.

1. Estate No. 162 in *pergunnah* Barhampur in the Rajshahye District.
2. Do. 165 Do. Do. Do.
3. Do. 167 Do.
4. Do. 169 Do.
5. Do. 1829."

Form of Rent Receipt.

রসীদ রূপেয়া বাবৎ খাজনালি			রসীদ রূপেয়া বাবৎ খাজনালি		
পরগণা			পরগণা		
মৌজা			মৌজা		
জমিদার			জমিদার		
প্রজার নাম			প্রজার নাম		
পিতার নাম			পিতার নাম		
খাজনা	কোঃ	একুন	খাজনা	কোঃ	এনকু
	মঃ			মঃ	
আদায়কারীর স্বাক্ষর			আদায়কারীর স্বাক্ষর		
টাকা লিবার তারিখ			টাকা লিবার তারিখ		

যন্তব্য। এই খাজনা ১২৯১ সালের পৌষ যন্তব্য। এই খাজনা ১২৯১ সালের পৌষ
 কিস্তির পর জমানার হিসাব অনুসারে মুক্তরা কিস্তির পর জমানার হিসাব অনুসারে মুক্তরা
 পড়িবে তৎপূর্ব জমানার মুক্তরা পড়িবে না। পড়িবে তৎপূর্ব জমানার মুক্তরা পড়িবে না।

SCHEDULE III.**LIMITATION.**

(See section 184.)

PART I.—Suits.

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach. (See notes following.)	One year ...	The date of the breach.
2. For the recovery of an arrear of rent—		
(a) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding.	Six months ...	The date of the service of notice of the deposit.
(b) in other cases. (See notes following.)	Three years ...	The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat. (See notes following.)	Two years ...	The date of dispossession.

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days ...	The date of the decree of order appealed against.
5. From any order of a Collector under this Act, to the Commissioner.	Thirty days ...	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877. (See notes following.)	Three years ...	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

Vide notes under sections 184 and 185 ante.

Art. 1.—A suit by a landlord against a tenant for removal of trees which the latter has planted on his holding is not governed by the limitation of one year, but by art. 120, Schedule II, Act XV of 1877—(*Gonesh v. Gondor*, 12 C. L. R., 418). The defendant took certain land from the plaintiff under a registered lease, which contained a clause prohibiting the defendant from digging a tank on the land without the plaintiff's permission. The defendant having nevertheless constructed a tank without such permission, the plaintiff brought a suit to compel him to fill up the tank, and in case he should fail to do so, for compensation. It was held that the period of limitation applicable to such a suit was art. 120 of Schedule II of the Limitation Act—(*Kedar Nath v. Khetter*, 1. L. R., 6 Cal., 34). It is doubtful if these decisions will now hold good in the face of the present provision. Compare *Kristo Kumal v. Shib Prosad*, 11 W. R., 462; 3 B. L. R., App. 47.

Art. 2, cl. (a).—*Vide* sections 61—64 *ante*. The old provision (ss. 31 of Act VIII of 1869 B.C., and 6 of Act VI of 1862 B.C.) was: "Whenever a deposit on account of rent shall have been made under the provisions of this Act, or of Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, no suit shall be brought against the person making the deposit, or his representatives, on account of any rent which accrued due prior to the date of deposit, unless such suit be instituted within six months from the date of the service of notice in section 5 of the said Act VI of 1862, or in section 47 of this Act, mentioned." The conditions of deposit are very much altered by the new Act. It will be observed that under this article, as under the old law, a suit for arrears of rent, which fell due before the deposit, must be brought within six months from the date of the service of the notice, i. e., from the date on which the landlord received intimation that the deposit has been made. It must be presumed until shown to the contrary that notice was issued and duly served—(*Bejoy Gobind v. Karoo Singh*, 18 W. R., 531; *vide* section 114e of the Evidence Act.) Under the old law the notice ought to have been in the form set out in Schedule B of this Act, and if it omitted any of the words used in such schedule, such omission would be fatal to the plea of limitation—(*Kanchan Molla v. Rajendra Chundra*, 18 W. R., 126). The deposit which is contemplated by this article is a deposit after the rents have fallen due; a tenant who deposited rent before it became due, would not be entitled to claim the benefit of the special limitation prescribed in this Act—(*Taramonee v. Joebun*, 6 W. R., Act X, 99; *Shaikh Ahmed Hussein v. Sheikh Keramat*, 8 W. R., 353). Where a zemindar had sold a *patni* for arrears of rent, due in 1224, Maghee, the patnidar sued for the reversal of the sale, and deposited the rent for 1225. The sale was reversed and the zemindar then sued for the rent of 1224, and was met with the objection that the suit should have been brought within six months from the date of the deposit of the rent of 1225. But the High Court held that this section did not apply, and that the zemindar was entitled to recover, as he had brought his suit within three years allowed by law—(*Sheik Mahomed Shahuroollah v. Musst. Roomya Bibi*, 7 W. R., 487). A suit for rent due for a period prior to a deposit made under Act VIII of 1869 (B.C.) is not barred by section 31 of that Act, where the contention of the defendants is that the tenure was the depositor's and that the rent was due from him and not from them—(*Ramdin v. Chundee Pershad*, 21 W. R., 278). Tenants who have been in the habit of depositing in Court the rent due to a landlord in his sole name, are not justified, without receiving notice or order to that effect, in making the deposit in the joint names of that landlord and another—(*John Rudd Rainey v. Nubo Koomar*, 24 W. R., 128). By a condition in the lease of a taluk, additional rent became payable in respect of all lands which, not being in a state of cultivation at the time of the lease, should be subsequently brought into cultivation, so soon as the lessee had enjoyed them rent-free for the space of 7 years. Rent having become due under this condition on certain lands which had not been in a state of cultivation at the time of making of the lease the lessee deposited in Court, as the entire rent payable in respect of the taluk, the same amount as he had paid in previous years. In a suit brought a year after the lessor had notice of such deposit to recover the entire rent payable in respect of the lands newly brought into cultivation, it was held that such suit having been instituted more than six months after service of notice of such deposit on the lessee was barred under Act VIII of 1869 B.C.—(*Ram Senaputty v. Bir Chunder*, 1. L. R., 4 Cal., 714). In a suit for rent, where it appeared that a deposit had been made in Court under the provisions of the Bengal Rent Act, and that the six months allowed by section 31 of that Act for the purpose of instituting a suit had expired on a day when the Court was closed for an authorized holiday, but that the plaintiff had been filed on the first day the Court re-opened; held that the provisions of section 5 of the Limitation Act (XV of 1877) applied to such cases, and that, consequently, the suit was not barred—(*Khoship Lal v. Gonesh Dutt, alias Nankoo Singh*, 1. L. R., 7 Cal., 690).

Month.—The calculation of the month will probably be according to the English Calendar—(*Saroda Proshad v. Pahalí*, 1. L. R., 10 Cal., 913; *Mahomed Elahie Buksh v. Brojo*, 1. L. R., 4 Cal., 497; *Joymongal v. Lal Ram Pal*, 4 B. L. R., App., 53; 13 W. R., 183; *Karoo*

Mundur v. Prem Lal, 9 B. L. R., App., 41; 18 W. R., 408; *Luchmiput v. Rajkoomari*, 23 W. R., 275.)

Art. 2, Cl. (b).—This article should be read with sections 53, 54, and 65 *ante*. Observe that under this article the time of limitation does not run from each *instalment* at which the arrear is due but from the last day of the year in which the arrear fell due.

The old provision (sections 32 of Act X of 1859 and 29 of 1869, B.C.) was: "Suits for the recovery of rent shall be instituted within three years from the last day of the Bengali year, or from the last day of the month of Joyt of the Fuslee or Willayuttee year, in which the arrear claimed shall have become due, provided that if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such 'rent having been enhanced under section 13 of Act X of 1859, or under section 14 of this Act; and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengali year, or of the month of Joyt of the Fuslee or Willayuttee year on account of which such enhanced rent is claimed." The new Act cuts the proviso of the old Acts—(*Gobind Kumar v. Hurogopal*, Nag, 11 W. R., 537). Hence the rent of any portion of one year is recoverable any time up to the last day of the third year after its close—(*Bykunt Ram v. Musst. Surfoonnassa Begum*, 15 W. R., 523). But it is a mistake to suppose that this section only authorizes to recover three years' rent. Thus where a suit is commenced within three years from the end of the Bengali year, 1268, i. e., on the last day of the month of Choitra of 1271, the plaintiff can recover rent for four years, 1268, 1269, 1270, and 1271—(*Doorga Dass v. Nobin Mohan*, 6 W. R., Act X, 63; *Landos v. Benode Lal*, Ib., 37; *Gossain Hurree Narain v. Baboo Jan*, 7 W. R., 301.) The period of limitation within which a suit for arrears of rent may, under Bengal Act VIII of 1869, section 29, be instituted, must, in the absence of any special agreement, be calculated from the last day of the year following the expiration of the year for which such rent is claimed—(*Woomesh Chundur v. Soorjee Kanto*, 1. L. R., 5 Cal., 713). This has been overruled by a Full Bench in *Kashi Kant v. Rohini Kant*, 1. L. R., 6 Cal., 323, which held that the last day on which a suit for the recovery of arrears of rent can be instituted under section 29, Bengal Act VIII of 1869, is the last day of the third year from the close of the year in which the rent

Rent must be certain. became payable. For fuller judgments in these two cases, *vide p.* 245. An arrear of rent is not due within the meaning of this section until the rent itself has been determined—(*Komul Lochun v. Moran & Co.*, 2 W. R., (Act X,) 83).—"I may observe," says Norman, J., "that it is an essential part of the definition of rent that it should be certain; until a rent has been definitely fixed and ascertained, either by the agreement of the parties, or those to whose rights and liabilities they succeed, or by some decree of Court or arbitrators, there can, of course be no such thing as an arrear of rent—(*Joymony Dassoo v. Hur Nath*, 2 W. R., Act X, 51).

Deduction of time under the general law of Limitation.—Except sections 7, 8, and 9 of the Indian Limitation Act, its provisions are applicable to this Act. *Vide* subsection (2) of section 185 *ante*.

Under the old law it was held that suits for arrears of rent were not affected by the provisions of the general law of limitation—(*J. Poulson v. Modu Sudan*, 2 W. R., Act X, F. B., 21; *Unnoda Persad v. Kristo Kumar*, 19 W. R., 5, P. C.; *Gobind Coomar v. W. B. Mansson*, 23 W. R., 152; *Watson & Co. v. Dhondro Chundra*, 1. L. R., 3 Cal., 6; *Parran Chander v. Muttu Lal*, 1. L. R., 4 Cal., 50; *Woomosh Chundra v. Soorjee Kanta*, 1. L. R., 5 Cal., 713); so it was held that no deduction should be allowed for pendency of suit in a Court without jurisdiction—(*Juggurnath v. Raghunath*, Sp. W. R. (Act X), 120; *Modhoo Sudan v. Brojonath*, 5 W. R., Act X, 44); or for pendency of an enhancement suit—(*Nubo Kant v. Raja Boroda Kant*, 1 W. R., 100; *Brojendra Coomar v. Rakhal Chundra*, 1. L. R., 3 Cal., 79; *Hurro Proshad v. Gopal Das*, 1. L. R., 3 Cal., 817; *Hurro Proshad v. Gopal Das*, 1. L. R., 9 Cal., 255; 1. L. R., 3 Cal., 818; *Baroda Kant v. Chundra Coomar*, 23 W. R., 280; *Hurriah Chundra v. Srinati Jugadumba Dossi*, 16 W. R., 61). As section 14 of the Indian Limitation Act will now apply to this Act, it is doubtful if these decisions will hold good in their integrity. The time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant shall be now excluded in computing the period of limitation, where the proceeding, founded upon the same cause of action, was prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it. Whether there is the same cause of action or *bona fide* in the prosecution are questions of fact and will vary according to circumstances. So even under the old law, under certain circumstances, deduction of time was allowed: by the Privy Council. *Rani Shurumoyi* brought to sale, under Regulation VIII of 1819, a *patni* for arrears of rent due in 1857. The *patni* was sold: the arrears were paid out of the purchase money, and the purchaser was put into possession. A suit was then brought to set aside the sale of this *patni* taluk on the ground of irregularity. The lower Court decreed the

suit, and cancelled the sale on the 26th December 1860, and this decision was upheld by the High Court on appeal on the 30th June 1863. The effect of this judgment was that the Ranees had to pay back the purchase money to the purchaser, and the patnidar recovered possession of his taluk with mesne-profits. The Ranees then brought a suit for the arrears of 1857, which she had released from the purchase money, but which on the cancellation of the sale she had been compelled to refund. Her suit was, however, dismissed on the ground that it was barred by section 32 of Act X of 1859 (section 29 of the Act), as the suit should have been brought within three years from the time the arrears first became due. The result of this decision was that the Ranees were deprived of her rent for 1857, and the patnidar got back his patni, and at the same time relieved himself from the obligation of paying the rent due for that year. Their Lordships, however, thought that upon the fair construction of section 32 the time had really not run; that upon the setting aside of the sale, and the restoration of the parties to possession, they took the estate, subject to the obligation to pay the rent; and that the particular arrears of rent claimed in this action must be taken to have become due in the year in which that restoration to possession took place; and that the appellant was not therefore barred from the remedy.—(*Rani Shornomayi v. Shoshee Mukhee*, 12 Moo. I. A., 242; 9 B. L. R., P. C., 11; 11 W. R., P. C., 5.) The result of this decision seems to be that, so long as a plaintiff is *bond fide* engaged in prosecuting or resisting suits as to rights without which he would be unable to sue, his right cannot be considered to have come into existence, until such litigation has ceased, the decision having frequently been followed by the High Court of Calcutta—(*Eshan Chunder v. Khajah Asanoolah*, 8 B. L. R., 537 note; 16 W. R., 79; *Dindoyal v. Radha Kishori*, 8 B. L. R., 536; 17 W. R., 415; *Mohesh Chunder v. Gunga Moni*, 18 W. R., 59; *Huronath v. Goluknath*, 19 W. R., 15). So it has been held that section 5 of Act XV of 1877, which excludes holidays in computing the period of limitation will apply to the Rent Act—(*Gopal Chand v. Kristo Chunder*, 1 L. R. 5 Cal., 314; *Khoshi Lal v. Gunesh alias Nunko*, 1 L. R., 7 Cal., 609.) *Vide* notes under sub-section (2) of section 185 *ante*.

Art 3.—The old law gave one year's time in a case like this. Section 27 of Act VIII of 1869, B. C., (section 30, Act X of 1859) was. "All suits to recover the occupancy of any land, farm, or tenure from which a raiyat, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same, shall be commenced within the period of one year from the date of the accruing of the cause of action and not afterwards." The present Act has substituted two years for one. The year must be calculated according to the British Calendar—(*Kharro v. Premal*, 9 B. S. R., App., 41; 18 W. R., 403; *Luch mipat v. Raj Coomaree*, 23 W. R., 275; *Maharajah Joy Mungal v. Lal Kungpal*, 13 W. R., 183.) The words "suits to recover the occupancy of land, &c.," in section 27 of Act VIII of 1869, B. C., included only possessory action against persons entitled to receive rent, and not suits setting out title and seeking to have right declared and possession given in pursuance thereof, and the limitation prescribed in that section applied only to such simple cases of possessory actions—(*Nistarini v. Kalee Pershad*, 21 W. R., 53; *Ashman v. Shaikh Obeeduddin*, 23 W. R., 460; *Gooroo Das v. Bisht Churn*, 7 W. R., 86; *Baboo Laljee v. Bhugwan*, 8 W. R., 337; *Dhonayo v. Arif*, 9 W. R., 306; *Ramjoy v. Ram Sunder*, 2 C. L. R., 4; *Nil Madhub v. Srinivash*, 9 C. L. R., 237; *Musst. Dnrjobutty v. Chunder*, 25 W. R., 217). So in *Forbes v. Sree Lal*, 1 L. R., 8 Cal. 365, it was held that section 27 of Beng. Act VIII of 1869, applies only to such suits for possession as the Court is asked to decide irrespectively of any title, but simply on the ground that the plaintiffs have been ousted otherwise than by legal means. Similarly where a suit by a tenant against his landlord is both in form and substance one to recover possession on the ground of illegal dispossession by the landlord, and no question of the plaintiff's title is raised, the insertion in the plaint of a claim for declaration of the plaintiff's title is not sufficient to prevent the application prescribed by section 27 of Beng. Act VIII of 1869—(*Imam Buksh v. Momin Mondal*, 1 L. R., 9 Cal. 280). Where the plaintiff alleged that he was the holder of a jote under the defendant, by whom he had been forcibly dispossessed, and sued for a declaration of title and for restoration to possession; and the defendant did not question the plaintiff's tenure, nor his original title, but denied the forcible dispossession, and alleged that the plaintiff had relinquished the land: *Held* that the suit was not one to try a question of title, but was governed by the one year's period of limitation prescribed by s. 27, Bengal Act VIII of 1869—(*Srinath v. Ramratan*, 1 L. R., 12 Cal., 606).

In *Tamsuddin Munshi v. Huronath*, 9 C. L. R., 252, where the plaintiff sued to recover possession of certain land as the ancestral mourasi jote of the plaintiffs, from which they had been dispossessed by the defendant, the latter denied the possession, and alleged that the plaintiffs had themselves relinquished the land in question. It was found that although the alleged title was not proved that the plaintiffs had any occupancy right, they had been dispossessed by the defendant. On appeal it was contended that the suit was barred under section 27 of Act VIII (B. C.) of 1869, as not having been brought within one year

from the date of the dispossession. It was held that the suit involved a question of title, and that the limitation of a year prescribed by section 27 of the Rent Act, therefore did not apply. So in *Nilmadhub, a. Srinivash, I. L. R., 7 Cal., 442*, where the plaintiff sued for possession of land, it appeared that the defendants had obtained a *darpatni* lease of the land in question in 1271 (1865), and that they had immediately dispossessed the plaintiff, and had never acknowledged him to be their tenant. The plaintiff instituted his suit within 12 years from the date of dispossession. It was held that the suit was not barred by limitation under s. 27 of Beng. Act VIII of 1869. That section only applies to cases where the relation of landlord and tenant exists, and cannot be pleaded in bar by a defendant who does not admit that such relation has existed. The latest decision on the point is *Joyanti Dasi v. Mahomed Ally Khan, I. L. R., 9 Cal., 423*, where it was held that the limitation provisions of section 27, Bengal Act VIII of 1869, have no application to a case in which the plaintiff relies upon his title and seeks to recover possession upon the strength of that title, and in which the defendant denies that title. This was further considered in a more recent case, where the plaintiff alleged that he was the holder of a *jote* under the defendant by whom he had been forcibly dispossessed, and sued for a declaration of his title and for recovery of possession claiming a right of occupancy, and the defendant, while admitting that the plaintiff had for one or two years been a tenant of a small portion of the land in suit denied his title to the remainder, or that he had acquiesced in a right of occupancy: Held, that the suit was one to try a *bond fide* question of title, and it was not barred by one year's limitation under s. 27 of Bengal Act VIII of 1869, but was maintainable within 12 years from the date of the cause of action—(*Basarut Ali v. Attap, Hossain, I. L. R., 14 Cal., 624*).

In *Gunesh Das v. Gondur Koormi, I. L. R., 9 Cal., 147*, it was held that section 27 of Beng. Act VIII of 1869, only relates to such suits as could be brought either by the landlord or tenant under Act X of 1859 and will not apply to an alternative claim, put forward in a suit for ejectment, to compel the defendant to remove trees from certain lands leased to him for agricultural purposes. Article 120 of Sch. II of Act XV of 1877 is applicable to such claims. But in one decision it has been held that where a *raiayat* having a mere right of occupancy in certain land, has been wrongly dispossessed by the *zemindar*, his suit to recover possession must be brought under section 27 of Beng. Act VIII of 1869, within one year from the date of dispossession—(*Brindabun Chhnder v. Dhunanjay, I. L. R., 5 Cal., 246*). The current of decisions is, however, against this ruling as shown above. This decision on the other hand seems to have guided the Legislature in drafting the provision under comment. The suit now must be to recover possession of land claimed by the plaintiff as an occupancy *raiayat*. It may be argued that if the limitation of twelve years applies to an occupancy *raiayat*, this provision must be superfluous. But it may be answered again that it is meant only for possessory actions. The Act has substituted two years for one, and the *raiayat* must be an occupancy *raiayat* to get the benefit of this article. Under the old law any *raiayat* might come under the corresponding provision. The decisions of *Crowdy v. Jukhree Dhanook, 23 W. R., 387*, and *Crowdy v. Ram Bharoshee Chowdhury, 23 W. R., 383*, are overruled. It has been argued however that this article does away with the special provision of a possessory suit as existed under the old law, and that it applies only to cases where the *raiayat* sues for possession by establishing his right. In support of the argument, the following passage, from the report of the Rent Commission has been cited: "We have provided that one year shall be the period of limitation for a suit by a *raiayat* against his landlord to recover possession of a holding from which such *raiayat* has been illegally ejected by such landlord in any case not governed by section 9 of the Specific Relief Act I of 1877; in other words, for a suit intended to try not merely the question of dispossession without consent but also a question of title. For a similar suit by a tenure-holder or under tenure-holder we have provided a limitation period of three years." Art. 17 then provided that for a suit "by *raiayat* against his landlord to recover the possession of a holding from which such *raiayat* has been illegally ejected by such landlord, in any case not governed by section 9 of the Specific Relief Act, 1887," one year would be the period of limitation from the date of dispossession; so art. 20 provided that to a suit "by a tenure-holder or under tenure-holder against his landlord to recover the possession of a tenure or under-tenure from which such tenure-holder or under-tenure-holder has been illegally ejected by such landlord, in any case not governed by section 9 of the Specific Relief Act, 1877," 3 years' limitation applied from the date of dispossession. Now the most important words in these articles, as well as in the extract of the Report of the Commissioner, are "in any case not governed by section 9 of the Specific Relief Act, 1877." These words gave to those articles the sense which the Commissioners meant to convey, *s. g.*, that these suits are suits for title. The omission of these words in the article that passed into law tends to show that the original intention was abandoned and the article has been altogether remodelled.

In a suit to recover money alleged to have been paid by the plaintiffs to the defendants in excess of the sum demandable by the latter from the former on account of road cess, it was held (reversing the decisions of the Courts below) that the suit was governed not by the special law of limitation contained in s. 27, Bengal Act VIII of 1869, but by Art. 96, Sch. II of the Limitation Act XV of 1877—(*Mathuranath v. O. Steel*, I. L. R., 12 Cal. 533).

PART II.
THE TRANSFER OF PROPERTY ACT
(IV OF 1882.)

OF LEASES OF IMMOVEABLE PROPERTY.

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value, to be rendered periodically, or on specified occasions to the transferor by transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the Lessor, lessee, premium, price is called the premium, and the money, shares service, or other thing to be so rendered is called the rent. and rent defined.

106. In the absence of a contract or local law, or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy: and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable), affixed to a conspicuous part of the property.

107. A lease of immoveable property, from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immoveable property may be made either by an instrument or by oral agreement.

108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

A.—Rights and liabilities of the lessor.

- (a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is, and the latter is not aware, and which the latter could not with ordinary care discover.
- (b) The lessor is bound on the lessee's request to put him in possession of the property.
- (c) The lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption. The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

B.—Rights and liabilities of the lessee.

- (d) If during the continuance of the lease any accession is made to the

property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease.

- (e) If by fire, tempest or flood, or violence of an army, or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void.

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision.

- (f) If the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor.
- (g) If the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor.
- (h) The lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth: provided he leaves the property in the state in which he received it.
- (i) When a lease of uncertain duration determines by any means, except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee, and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them.
- (j) The lessee may transfer absolutely or by way of mortgage or sublease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease.

Nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of the Court of Wards, to assign his interest as such tenant, farmer, or lessee.

- (k) The lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not aware, and which materially increases the value of such interest.
- (l) The lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf.
- (m) The lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear or tear, or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof, and give or leave notice of any defect in such condition; and when such defect has been caused by any act or default on the part of the

lessee, his servants, or agents, he is bound to make it good within three months after such notice has been given or left.

- (n) If the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor.
- (o) The lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines, or quarries not open when the lease was granted, or commit any other act which is destructible or permanently injurious thereto.
- (p) He must not without the lessor's consent erect on the property any permanent structure, except for agricultural purposes:
- (q) On the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. If the lessor transfer the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him; provided that the transferee is not entitled to arrears of rent due before the transfer, and that if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what portion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing which term commences, that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Duration of lease for a year.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Option to determine lease.

111. A lease of immoveable property determines—

- (a) by efflux of the time limited thereby:
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event:
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to the happening of any event—by the happening of such event:

Determination of lease.

- (d) in case the interests of the lessee and lessor in the whole of the property become vested at the same time in one person with the same right :
- (e) by express surrender ; that is to say in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them :
- (f) by implied surrender :
- (g) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void ; or (2), in case the lessee renounces his character as such by setting up a title in a third person, or by claiming title in himself ; and in either case the lessor or his transferee does some act showing his intention to determine the lease :
- (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f)

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. A forfeiture under section one hundred and eleven, clause (g), is

Waiver of forfeiture. waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting :

Provided that the lessor is aware that the forfeiture has been incurred :

Provided also that, where a rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver :

113. A notice given under section one hundred and eleven, clause (h), is

Waiver of notice to quit. waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations.

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where a lease of immoveable property has determined by forfeiture

Relief against forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture ; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

115. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-leases, or relief against the forfeiture is granted under section one hundred and fourteen.

116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section one-hundred and six.

Illustrations.

(a) A lets a house to B for five years. B under-lets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease renewed from year to year.

117. None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification published in the local official Gazette, declare all or any of such provisions to be so applicable, together with, or subject to those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

PART III:

THE PATNI SALES.

**REGULATION VIII OF 1819 ; REGULATION I OF 1820 ;
ACT VIII B. C. OF 1865.**

N. B.—See clause (c) of section 195 of the Bengal Tenancy Act

REGULATION VIII of 1819.

PATNI REGULATION.

A REGULATION to declare the validity of certain tenures and to define the relative rights of zemindars and patni talukdars, also to establish a process for the sale of such taluks in satisfaction of the zemindar's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal—Passed by the Governor-General in Council on the 3rd September 1819.

By the rules of the perpetual settlement proprietors of estates paying revenue to Government, that is, the individuals answerable to Government for the revenue then assessed on the different mahals, were declared to be entitled to make any arrangements for the leasing of their lands in *taluk* or otherwise, that they might deem most conducive to their interests. By the rules of regulation XLIV of 1719, however, all such arrangements were subjected to two limitations—*first*, that the jumma or rent should not be fixed for a period exceeding ten years; and, *secondly*, that in case of a sale for Government arrears such leases or arrangements should stand cancelled from the day of the sale. The provisions of section 2, Regulation XLIV of 1793, by which the period of all fixed engagements for rent was limited to ten years, have been rescinded by section 2, Regulation V of 1812, and in Regulation XVIII of the same year, it is more distinctly declared that zemindars are at liberty to grant *taluks* or other leases of their lands, fixing the rent in perpetuity at their discretion, subject, however, to the liability of being dissolved on sale of the grantor's estate for arrears of the Government revenue in the same manner as heretofore. In practice the grant of *taluks* and other leases at a rent fixed in perpetuity had been common with the *zemindars* of Bengal for some time before the passing of the two Regulations last mentioned, but, notwithstanding the abrogation of the rule which declared such arrangements null and void, and the abandonment of all intention or desire to have it enforced as a security to the Government revenue in the manner originally contemplated, it was omitted to declare in the rules of Regulations V and XVIII of 1812, or in any other Regulation, whether tenures at the time in existence and held under covenants or engagements entered into by the parties in violation of the rule of section 2, Regulation XLIV of 1793, should, if called in question, be deemed invalid and void as heretofore. This point it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence, notwithstanding that they may have been granted at a rent fixed in perpetuity or for a longer term than ten years, while the rule fixing this limitation to the term of all such engagements and declaring null and void any granted in contravention thereto was in force. Furthermore in the exercise of the privilege thus conceded to *zemindars*, under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Raja of Burdwan, but has since been extended to other *zemindars* to be held at a rent fixed in perpetuity by the lessee and his heirs for ever. The tenant is called upon to furnish collateral security for the rent and for his conduct generally, or he is excused from this obligation at the *zemindar's* discretion; but, even if the original tenant be excused, still in case of sale for arrears or other operations leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the *zemindar*. By the terms also of the engagements interchanged it is amongst other stipulations provided that in case of an arrear occurring the tenure may be brought to sale by the *zemindar*, and, if

the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand. These tenures have usually been denominated *patni taluks*, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons, who on taking such leases went by the name of *durpatni talukdars*. These again sometimes similarly underlet to *se-patnidars*; and the condition of all the title-deeds vary in nothing material from the original engagements executed by the first holder. In these engagements, however, it is not stipulated whether the sale thus reserved to himself by the grantor is for his own benefit or for that of the tenant, that is, whether, in case the proceeds of the sale should exceed the zemindar's demand of rent, the tenant would be entitled to such excess; neither is the manner of sale specified, nor do the usages of the country nor the Regulations of Government afford any distinct rules, by the application of which to the specific cases the defects above alluded to could be supplied, or the points of doubt and difficulty involved in the omission be brought to determination in a consistent and uniform manner. The tenures in question have extended through several *villahs* of Bengal, and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the Courts of Civil Judicature in regard to them have been productive of such confusion as to demand the interference of the Legislature. It has accordingly been deemed necessary to regulate and define the nature of the property given and acquired on the creation of a *patni taluk* as above described, also to declare the legality of the practice of under-letting in the manner in which it has been exercised by *patnidars* and others, establishing at the same time such provisions as have appeared calculated to protect the under-lessee from any collusion of his immediate superiors with the *zemindars* or others for his ruin, as well as to secure the just rights of the zemindars on the sale of any tenure under the stipulations of the original engagements entered into with him. It has further been deemed indispensable to fix the process by which the tenures are to be brought to sale and the form and manner of conducting such sale; and, whereas the estates of *zemindars* under engagements with Government are liable to be brought to sale and the form and manner of conducting such sale; and whereas the estates of *zemindars* under engagements with Government are liable to be brought to sale at any time for an arrear in the revenue payable by monthly kists to Government, it has seemed just to allow any zemindar who may have granted tenures with a stipulation of the right to sell for arrears, the opportunity of availing himself of this means of realizing his dues in the middle of the year as well as at the close, instead of only at the end of the Bengali year as heretofore allowed by the Regulations in force. It has further been deemed equitable to extend this rule to all cases in which the right of sale may have been reserved, even though in conformity with the Regulations heretofore in force, the stipulation for sale contained in the engagements interchanged may have restricted such sale to the case of a demand of rent remaining unpaid at the close of the Bengali year. It has been likewise deemed advisable to explain and modify some of the existing rules for the collection of rents with a view to render them more efficacious than at present, as well as to provide against sundry means of evasion now resorted to by defaulters. The following rules have accordingly been enacted by His Excellency the most Noble the Governor-General in Council, to take effect from the date of their promulgation throughout the several districts of the Province of Bengal including Midnapur.

The term *patni primâ facie* imports a hereditary tenure. In *Tarini Charun v. John Watson*, 8 B. L. R., A. C., 437; 12 W. R., 418, the Court was of opinion that the term *patni taluk primâ facie* imports an hereditary tenure; that there was no clear instance

of the term having ever been applied to a life-interest merely: that, although there was nothing in Regulation VIII of 1819 to prevent the grant of a tenure not hereditary, yet looking to the preamble as showing what in the common understanding of persons acquainted with such matters and in the ordinary use of language is meant by the expression '*patni taluk*,' the Court could have no doubt whatever that when a man grants a *patni taluk*, he clearly means an heritable interest. If he intended to grant anything else, the term would be mis-applied, and nothing but an express declaration that a heritable tenure was not intended would be sufficient to show that the term was used in so exceptional a sense. As to the question of *alienability*, the Court were of opinion that a tenure in the nature of a *patni taluk* is by its very nature alienable. It was contended that the use of certain words in this particular case restrained alienation; but the Court decided that the words in question had no such effect. So in *Krista Mani v. Gurugobinda*, 2 Sevestre, 173, it was held that a *patni* created subsequently to the passing of Regulation VIII of 1819 is liable to sale, even though an express condition to that effect may not have been inserted in the *kabuliyat*. In *Brindaban Chandra v. Bindaban Chandra*, 13 B. L. R., 409; 21 W. R., 324; 1 L. R., I. A., 178, a decree having been obtained by a zemindar for arrears of rent of a *putni taluk*, it was held that, under the description "*putni*" and "*darputni*" the *prima facie* intention was that a tenure called *putni* tenure was transferable by sale, and was one upon which the right to sell for arrears of rent was reserved in the engagements interchanged upon the creation of the tenure. Consequently, according to the effect of Act X of 1859, s. 105 and Reg. VIII of 1819, ss. 8 and 11, and probably also of Reg. I of 1820, the sale of the *putni* destroyed all incumbrances created by the *putnidar*, e. g., a *darputni*. A *putnidar* is presumably entitled to exercise all the rights of ownership with respect to the land which the zemindar himself might, but for the *patni*, have exercised—(1 Hay's Report, 65; Marshall's Reports, 28). A *patni* lease of certain lands granted by a Hindu widow while in possession is in no respect invalidated by the fact that her equity suit is pending at the time. If there is no legal necessity to justify the alienation, the *putnidar* acquires no more than the life interest of the widow; but if there is, then a subsequent purchase is subject to the potta granted by the widow as a valid alienation of a prior date—(*Bissonath Chander v. Radha Krista*, 11 W. R., 554; see also 1 Hay, 339; Marshall, 113). A *putnidar* of the heir of a party to whom a share of an estate was made over by written agreement may sue to recover that property, although that party never came into possession—(1 W. R., 216). Where a *patni* was obtained by fraud, it was held to be defeasible by an auction-purchaser although duly registered—(*Ram Chunder v. Kashi Nath*, Sp. W. R., 66). A *putnidar* obtaining a potta from a mortgagor subsequent to the mortgage and in violation of its conditions, cannot hold possession against the purchaser of the rights and interests of the mortgagors sold in execution of a decree—(*Brojo Kishori v. Mahomed Sulim*, 10 W. R., 151). In (*Watson & Co. v. The Collector of Rajshahye*, 12 W. R., P. C., 43; 2 P. C. R., 269 3 B. L. R., P. C., 48; 13 Moo., 160), Regulation VIII of 1819 was considered with reference to the relative rights of *zemindars* and *patni talukdars*: "The scope of the Regulation is first, to legalise the tenure, the legality of which had been doubted: after declaring that *patni* tenures are valid, it provides that they shall be transferable and answerable for the debts of the *putnidar*. It next declares that such tenures are not voidable for arrears of rent, but that the zemindar's remedy, where there is an arrear of rent, shall be a sale under the provisions of the Regulation. It further declares that the zemindar is not entitled to refuse to give effect to a transfer, and then follow certain provisions which are in favor of the zemindar." A *patni* may be set aside as invalid and made in fraud of creditors, notwithstanding the acquiescence of subsequent mortgagees—(1 W. R., 362). Where certain mortgages were in existence at the time a *patni* was granted, the interest under the *patni* did not pass—(*Jora Ghazee v. Abou Khalifa*, 21 W. R., 427). A zemindar who gives his estate in *patni* lease is still entitled to challenge the right of another who asserts a *lakhiraj* title adverse to him—(*Obhoyram Jana v. Synd Mahomed Hossein*, Sp. W. R., 212). Where a *patni* had been sold for arrears of rent, and certain persons claiming to have been in possession of the superior *zemindari* rights in the estate, had sought on a former occasion to set aside the sale but had failed and now renewed the attempt, it was held that even if the claims of these persons to the *zemindari* right had been proved, which was not the case, they could not now repeat their former claim against the *putnidar* in a new form; nor could they, after having always maintained that there was no *patni taluk* and that they held and occupied the lands in dispute as proprietors, now be allowed to fall back upon the plea that if not proprietors, they have throughout held the lands as *putnidar*, and duly paid the *patni* rent for the same—(*Huronath v. Romanath*, 25 W. R., 321). Where a suit was brought by the heirs of a deceased zemindar to set aside two *patnis* created by him *benami* in the names of his daughters, it was held (1) that though the fund was advanced by the father, yet the advance must be presumed to have been by way of provision for the daughters, and that the *patnis* were created *bona fide* in favor of them; (2) that, if this were not so, the title of a *bona fide* purchaser for valuable

consideration without notice of trust would be good against the heirs—(2 Hay's Report, 680 Marshall's Reports, 564). Where consideration money has been paid for a patni lease with a view to khas possession, and such possession is not obtained, the proper course is to repudiate the lease and bring an action immediately—(Mukund Chunder v. Pran Kishon, Sp. W. R., 287; L. R., 67). If a party leases an estate in *patni* reserving the right of re-entry in case of his wishing to hold it *khas*, he cannot sue to recover possession for the purpose of leasing it to a third party—(Raghoonath v. Harish Chander, Sp. W. R., 326; L. R., 102). It being doubtful whether a manager of endowed property can grant a *patni* thereof, the Court declined to enforce specific performance of a contract for the grant by a manager of a *patni* lease—(1 W. R., 4). *Per contra*, the grant of a *patni* tenure by a *shebait* may be valid—(Tubhoonissa v. Kumar Sham Kishore, 15 W. R., 228).

2. It is hereby declared that any leases or engagements for the fixing of

Leases fixing rent in perpetuity or for a longer term than ten years declared valid, though executed while section 2, Regulation XLIV, 1793, was in force.

rent now in existence, that may have been granted or concluded for a term of years or in perpetuity by a proprietor under engagements with Government or other person competent to grant the same shall be deemed good and valid tenures according to the terms of the covenants or engagements interchanged, notwithstanding that the same may have been executed before the passing of Regulation V, 1812, and while under the rule of section 2, Regulation XLIV, 1793,* which limited the period for which it was lawful to grant such engagements to ten years and declared all that might be entered into for a longer term to be null and void, was in full force and effect; and notwithstanding that the stipulations of the said leases may be in violation of the rule in question; provided, however, that nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to Government from liability to be cancelled on sale of the said estates for arrears of the said revenue, unless especially exempted from such liability by the sale in question or by any other specific rule of the Regulations in force.

Section 2, Regulation VIII of 1819, empowers the incoming *patnidar* to rid himself of all incumbrances created by the defaulting proprietor only—1 R. J., P. J., 109, Sec 3 B. L. R., 226; 1 L. R., 5 Cal., 543; 1 L. R., 8 Cal., 663; 13 B. L. R., 121.

3. *First*.—The tenures known by the name of *patni taluks*, as described in

Patni tenures declared valid, transferable and answerable for debt. the preamble to this Regulation, shall be deemed to be valid tenures in perpetuity according to the terms of the engagements under which they are held. They are heritable by their conditions, and it is hereby further declared that they are capable of being transferred by sale, gift, or otherwise at the discretion of the holder, as well as answerable for his personal debts and subject to the process of the Courts of Judicature in the same manner as other real property.

Second.—*Patni talukdars* are hereby declared to possess the right of letting out the lands composing their *taluks* in any manner under-letting declared. they may deem most conducive to their interest, and any engagements so entered into by such *talukdars* with others shall be legal and binding between the parties to the same, their heirs and assignees: provided, however, that no such engagements shall operate to the prejudice of the right of the *zemindar* to hold the superior tenure answerable for any arrear of his rent, in the state in which he granted it free of all incumbrance resulting from the act of his tenant.

Third.—In case of an arrear occurring upon any tenure of the description

Patni tenures declared alluded to in the first clause of this section, it shall not voidable for arrears. not be liable to be cancelled for the same, but the tenure shall be brought to sale by public auction, and the holder of the tenure

* Repealed by Act VI of 1874.

will be entitled to any excess in the proceeds of such sale beyond the amount of the arrears of rent due, subject, however, to the provisions contained in section 17 of this Regulation.

A patnidar cannot grant a lease of land of which he is not in possession—2 W. R., 138. *Per contra* in *Pran Krista De v. Bissumbhur Sein*, 11 W. R., 80. So where a patnidar, while out of possession of the patni estate, granted a *durpatni* thereof, it was held that the *durpatnidar's* suit against third persons, who were in possession of the estate, to recover possession would lie, it appearing that the plaintiff had paid an adequate consideration for the *durpatni*—*Loke Nath Ghose v. Jugobundhoo Roy*, 1 L. J., 1 Cal., 297. The holders of a *taluki-potta* from the zemindar are not bound to give *kabuliyats* to the *patnidar*—*Munsur Ahmed v. Azzuddin*, Sp. W. R., 129. Compare cl. 3 with sections 65 and 66 of the Bengal Tenancy Act.

4. If the holder of a patni taluk shall have underlet in such manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this Regulation, the holder of such a tenure shall be deemed to have acquired all the rights and immunities, declared in the preceding section to attach to patni taluks, in so far as concern the grantor of such under-tenure. The same construction shall also hold in the case of patni taluks of the third or fourth degree.

A *durpatnidar* is entitled to damages only if the *patni* taluk is put up to sale by the zemindar, owing to the sole neglect or default of the *patnidar*, in not paying his rent, but not where the forfeiture is incurred by reason of failure of the *durpatnidar* to perform his contract and pay his own rent—*Sev. 84*; (*Madhub Anund v. Joi Kumari*, 3 W. R., 201.) A registered *durpatnidar* is liable for the rent, though he has sold his tenure to a party not acknowledged by the *patnidar*. A payment made by the purchaser who has not obtained registration is a voluntary payment for which the *durpatnidar* cannot claim deduction—(*Lukheerai v. Sitanath*, 6 W. R., (Act X); 15 W. R., 125). This decision is, however, superseded by (*Lukheerai v. Khetra Pal*, 20 W. R., P. O., 380; 13 H. L. R., 146; 2 P. O. R., 903,) in which their Lordships held that the status of a *durpatnidar* does not depend upon registration or the consent of the zemindar, and that a *durpatnidar* paying money as rent to save the *patni* taluk from sale, is entitled to a refund even though his name has not been registered in the sherista of the zemindar. See also *Okhoy Kumar v. Mahtab Chand*, 22 W. R., 299. A *durpatnidar* cannot be ousted so long as he pays his *durpatni* rents except by regular course of law—(*Jadubehander v. Bholanath*, 5 W. R., *Mis.*, 51). A *durpatni* lease granted upon the payment of a bonus contained a condition that if the annual rent remained for a longer period than one month in arrear the lessor should have a right of re-entry. The lessor upon default in payment of rent, without availing of the forfeiture, instituted a summary suit for the arrears of rent, and upon an award therein the lands were sold for such arrears. It was held that the purchaser who bought the *patni* tenure without notice of the condition, for forfeiture, was not subject to that condition—(*Doendyal v. Juggessur*, *Marsh.* 252). A holder under a *durpatnidar* of a portion of a *patni* taluk has a right to sue for possession—4 W. R., 55. A *durpatnidar* who has come into possession of the superior tenure and is entitled to its profits, is bound to give notice of his title to the *rishtas* to be able to recover rent from them—4 W. R., Act X, 83. The *durpatnidar* leased the land in dispute to a tenant, who sublet it to another, who again sublet it. Each of those tenants reserved to himself the right of receiving rent from his own tenant and of paying rent to his lessor. The *durpatnidar* was cognizant of the several transfers, and continued to receive rent from her original tenant. She could not therefore plead that the transfers were made without transaction, and the lease to her tenant and the subordinate leases were cancelled. The last of the sub-lessees deserted the land. It was held that his desertion could not deprive the other sub-lessees of their rights, or entitle the *durpatnidar* to re-enter into possession of the land—(*Grish Chunder v. Ram Golam*, 12 W. R., 175). *Messe*-profits cannot be decreed against a *durpatnidar*, nor can rent be decreed in a suit for ejectment—(*Digbijoy Chunder v. Jadub Churan*, 8 W. R., 181). Where a *patni* is found to be *benami* a *bona fide* *durpatni* does not necessarily lapse—(*Dwarkanath v. Sreegopal*, 5 W. R., 240). A *patni* estate was the inheritance of five brothers, two of whom appropriated the whole of it. It was held that the holder under a *kaimi potta* from the *durpatnidar* of the three ousted brothers could sue to obtain possession of his share of the estate—(*Tara Sundari v. Shama Sundari*, 4 W. R., 58). Where a *patnidar*, while out of possession of the *patni* estate, granted a *durpatni* thereof, it was held that the *durpatnidar's* suit

5. The right of alienation having been declared to vest in the holder of a Zemindar not entitled to refuse to give effect to a transfer. transferring his interest from But may demand fee fixed at two per cent. on the jumma. the jumma or annual amount to one hundred rupees. But the maximum one hundred rupees. transferee or purchaser May also demand security, as far as half the jumma. above rules shall apply equally to the case of a sale made in execution of a decree or judgment of Court, as to all other alienations ; but it shall not apply to the case of a sale for an arrear in the rent due to the zemindar or other superior under the rules hereinafter contained. The purchaser at such a sale shall be entitled to have his name registered and to obtain possession without fee, though of course liable to be called on to give security under the conditions of the tenure purchased.

Vide notes quoted under section 4; and the cases of Lakhinaraïn v. Sita Nath, Ind. Jur. N. S., 317; 6 W. R., (Act X), 8; and Luki Narain v. Khetra Pal, 13 B. L. R., 147; 20 W. R., 280. When the purchaser of a *patni* taluk fails to obtain registry of his name in the zemindar's book, a third party claiming title from the vendor has no right to treat the purchaser as a tenant—(Ram Narain v. James Twoedie, 12 W. R., 161). When a share in a *patni* is transferred by a registered *patnidar* without express consent of the zemindar and in disregard of the Regulation cited, the transfer is not binding on the zemindar—(Watson v. The Collector of Rajshahye, 12 W. R., P. C., 43). The zemindar, when applying to the Collector for the sale of a *patni* tenure, is not bound to recognize all the co-sharers of the *patni*, but only the registered *patnidar*—(Raghub Chunder v. Brojo Nath, 14 W. R., 489). On the death of a registered *patnidar*, a zemindar is not bound to recognize any one as his tenant without registration in his sherista, nor is he prevented from putting in a *sezawal* to collect rents until a declaration of the rights of the deceased *patnidar*'s heirs—(Ram Churn v. Durga Mayi, 17 W. R., 122). The fact of a *patnidar* having made separate payment of rents, of having registered his name with each of the sharers, and of being prepared to enter into a fresh engagement with one of them, does not amount to a cancellation of the original lease and substitution of a new lease—(Sham Chand v. Juggut Chunder, 22 W. R., 50). The purchaser of a surety's rights and interests in a *patni* taluk buys them subject to the zemindar's claim for arrears of rent; and if to save the *patni* taluk from sale for such arrears he pays up the rent, he cannot recover from the surety, but may sue the other sharers for the money paid on their account—(Obhoy Chunder v. Nilambar, Sp. W. R., 73). A zemindar cannot bring a suit to compel the purchaser of a *patni* taluk sold for arrears of rent, to furnish security to the amount of half the yearly jumma; his remedy being under sections 5 and 7, Reg. VIII of 1819, to appoint his own *sezawal* and deduct his own rents before making over the surplus to the *patnidar*, who takes all the risk of attachment. The remedy of the zemindar is not affected by the grant by him of a *durpatni* to another party—(Joy Kishen v. Janoki Nath, 17 W. R., 470).

6. It shall be competent to the zemindar or other superior to refuse the registry of any transfer until the fee above stipulated be paid and until substantial security to the amount specified be tendered and accepted; provided, however, that if the security tendered by any purchaser or transferee should not be approved by the zemindar, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the Civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the zemindar to accept it and give effect to the transfer without delay. It is hereby provided that the rules of this and of the preceding section shall not be held to apply to transfers of any fractional portion of a *patni* taluk, nor to any alienation other than of the entire interest, for no apportionment of the zemindar's reserved rent can be allowed to stand good, unless made under his special sanction.

Vide notes under section 5. A *patni* tenure can only be divided by an act of the zemindar or an act recognized by him. A *patnidar* transferring his tenure without the zemindar's consent can only do so *in solido*, the transfer of a portion in no way affecting the entirety of the *patni* or the zemindar's right—(Jadoo Nath v. Jadub Churn, 11 W. R., 291). Therefore the auction-purchaser of such portion acquires nothing, and a portion of a *patni* tenure cannot be sold under the provisions of Regulation VIII of 1819—(Mohadob v. H. Cowell, Receiver of the estate of Baboo Promothomath Do, 15 W. R., 445). So the right given to a purchaser under Act VIII (B.C.) of 1865, section 16, is given to the purchaser of an entire under-tenure, and not to the purchaser of a share of an under-tenure. A sharer with limited interest cannot sell the whole under-tenure under Act VIII (B.C.) of 1865, for arrears recoverable either under that Act or Act X of 1859—(Sham Chand v. Juggut Chunder, 22 W. R., 541). But where one individual holds a *patni* by paying rent in equal shares to two owners of the zemindars, the division is the joint act of the *patnidar* and the zemindar, and is as if each of the zemindars had granted to the same person his share in *patni*—(Monmothomath v. G. Glascott, 20 W. R., 275). It is not open to a *patnidar* of his own choice to throw up the *patni*, and by so doing escape his liability to pay rent. The contract, though not indissoluble, can only be dissolved by an act of the Court and after proper enquiry—(Heorah v. Noel-mouey, 20 W. R., 383). One of the several grantors of a *patni* potta cannot get rid of the

patni as to a share in it, by a suit as *ijaradar* of that share for rent against the *raiya*s. The *patni* must be upheld till set aside by regular suit—(*Raj Chunder v. Unnoda Prosad*, 17 W. R., 221). According to section 6 here application for registration is not sufficient—(*Kristo Jeebun v. A. B. Mackintosh*, Sp. W. R., 53). There is no appeal from an order made by the Civil Court under Regulation VIII of 1819, section 6—(In the matter of the petition of *Soorja Kanta*, I. L. R., 1 Cal. 383.)

7. In case of the sale of a *patni* tenure in execution of a judgment of Court,

Upon public sale, if the purchaser do not within the period of one month security be not tendered from the sale conform to the rules of section 5 of this Regulation in order to obtain the transfer of his tenure within one month *zemindar* may attach. by the superior to whom the rent fixed upon it is payable, the *zemindar* or other superior shall be entitled of his own authority to send a *sezawal* to attach and hold possession of the tenure, until the forms prescribed be observed. In case also of the sale of a *patni* tenure for arrears of the rent due upon it under the rules of this Regulation, if security be required by the *zemindar* and the purchaser fail to furnish the same within one month of the

Attachment to have the date of sale, the *zemindar* shall similarly be entitled to effect of a trust. send a *sezawal* to attach and hold possession of the interest which may have passed on the sale to the exclusion of the purchaser until the prescribed security be given. Attachments made under this section shall be regarded as trusts for the benefit and at the risk of the purchasers: consequently after deducting the rent due and the expense of attaching any surplus that may be yielded by the collections shall be held in deposit for such purchaser; but, if the collections for the time falls short of the rent, the tenure and person of the proprietor shall be liable in the same manner as if no attachment had been made and the accounts produced by the *zemindar* or other superior making the attachment shall be received as *prima facie* evidence to warrant process for an arrear so accruing.

Vide notes under section 5.

8. *First*.—*Zemindars*, that is proprietors under direct engagements with

Zemindars allowed sales of tenures, in which right of tenures, shall be entitled to apply in the manner following for periodical sales of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure. The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.

Second.—On the 1st day of *Baisakh*, that is, at the commencement of the

First sale to be applied following year from that of which the rent is due, the *zemindar* shall present a petition to the Collector, containing a specification of any balances that may be due to him on account of the expired year, from all or any *talukdars* or other holders of an interest of the nature described in the preceding clause of this section. The same shall then be stuck up in some conspicuous part of the *kachari*, with a notice that if the amount claimed be not paid before the first of *Jeyt* following, the tenures of the defaulters will on that day be sold by public sale in liquidation. Should, however, the first of *Jeyt* fall on a Sunday or holiday, the next subsequent day, not a holiday, shall be selected instead; a similar notice shall be stuck up at the *sadar kachari* of the *zemindar* himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the *kachari* or at the principal town or village upon the land of the

defaulter. The zemindar shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the mofussil shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same; or in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot. If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth of the month of Baisakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed. In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the kachari of the nearest Munsiff, or if there should be no Munsiff, to the nearest thana, and there make voluntary oath of the same having been duly published; certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

Although the provisions of section 8, clause 2 of Reg. VIII of 1819, specifying the manner in which proof should be given of service of notice of sale, are merely directory, it is, nevertheless, absolutely essential to the validity of a sale under the Regulation that the notice of such sale should be served in strict compliance with the directions given in the same clause and section of the Regulation—(*Bhagwan Chandra v. Suddor Ally*, I. L. R., 4 Cal., 41. *Gouru Lal v. Joodhashtir*, 25 W. R., 141 dissented from.) The due publication of the notice prescribed by Regulation VIII of 1819, section 8, clause 2, forms an essential part of the foundation on which the summary power to sell a patni taluk for non-payment of rent is exercised by the zemindar, who, when instituting this proceeding, is exclusively responsible for such publication being regularly conducted. Although objection to the form of receipt, and the absence of the receipt itself need not be regarded, if the fact of the due publication of the notices having been made is not a matter of controversy (as held in *Sona Bibi v. Lal Chand*, 6 W. R., 242); yet when that fact was in doubt owing to the evidence of it not having been secured according to the provisions of the Regulation, a result due to the neglect of those representing the zemindar,—the finding of the High Court that due publication had not been established by such proofs as were forthcoming, was maintained by the Judicial Committee,—(*Maharaja of Burdwan v. Tara Chandari*, I. L. R., 9 Cal. 619 (P. C.)) Clause 2, section 8 of Reg. VIII of 1819, which provides that a notice of sale under the Regulation shall be stuck up in the kachari of the zemindar, is not complied with by serving the notices upon the zemindar himself or his agent. The object of the Regulation is to make known to the holders of under-tenures and raiyats and the residents of the place that the patni will be sold if the arrears are not paid off within the time specified, and if the notice is not stuck up in the kachari, as proscribed by the Regulation, there is such a material irregularity in the publication as will avoid the sale—(*Govindlal v. Chand Hurree*, I. L. R., 9 Cal., 172). Compliance with the directions in Regulation VIII of 1819 as to the service of notice is essential to the validity of a sale under that Regulation. Where there was evidence of service upon the defaulter personally, but not of service at his kachari: Held that this was not sufficient, and that the sale must be set aside—(*Mahomed Zamir v. Abdul Hakim*, I. L. R., 12 Cal., 67).

Third.—On the 1st day of Kartik, in the middle of the year, the zemindar Mid year sale to be shall be at liberty to present a similar petition, with a applied for on 1st of statement of any balances that may be due on account of Kartick. rent of the current year, up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the 1st of Aghan, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartik, to less than one-fourth or a four-anna proportion of the total demand of the zemindar, according to the kistbandi, calculated from the commencement of the year to the last day of Kartik.

According to Regulation VIII of 1819, the sale of a patni tenure for arrears of rent must take place on a day in the Bengalee month of Jeyt. Where a sale which was advertised to take place on the 6th Jeyt 1269, a date erroneously stated in the sale notice

to correspond with the 17 May 1862 (Saturday) took place on the latter day (being really the 4th Jyot) the sale was held to be illegal—(Beoharam, one of the defendants, v. Issar Chunder, plaintiff, and Frankishen, defendant, Sp. W. R., 4). The expression *substantial witnesses* as used in clause 2, section 8, Regulation VIII of 1819, means men who have some state in the community, of local influence, importance or respectability. The words *residing in the neighborhood* do not restrict the witnesses to residents of the village, but include those living within a short distance of the kachari—(Mohini Dasi v. Jugadumba, Sp. W. R., 381; 2 W. R., 188). The statutory sale of an under-tenure under Regulation VIII of 1819 cannot be set aside, because one of the witnesses to the notice (which was in fact served) turns out not to be substantial. The High Court's construction of the word "substantial" in section 8 of the above Regulation, as meaning a wealthy man from whom damages could be recovered by the patnidar in the event of the attestation being false, was held by the Privy Council to be too limited a view; wealth being only one element in the position and status of the witness. If he lived in the neighbourhood and was a respectable man and of good character, their Lordships saw no reason why the Judge might not properly come to the conclusion that he was a substantial person—(Ram Sabuk v. Monomohini, 2 L. R., 1 A., 71; 23 W. R., 113; 14 B. L. R., 394; 3 P. C. R., 72). In a suit to set aside the sale of a *patni* for arrears of rent under Regulation VIII of 1819, on the ground that proper notices were not sent, served and published under section 8, clause 2, the objection in order to succeed must be one of substance and not merely of form. The requirements of the Regulation as to the service of the *istihar* and the signing of the receipt by substantial persons, may be held to have been substantially performed where the persons signing are such as are usually expected to attest such a document, persons who are treated with consideration, e. g., ameen, mookhtars, chaukidars. As regards the date fixed for sale, and the era to be followed, the intention of the Regulation was to lay down a uniform practice in each locality, uniformity being the essential requirement, and the particular date only the form for enforcing regularity—a practice which has been established for a course of years, and which is reasonable and convenient in itself, is not liable to objection in a mere point of form—(Srimati v. Pitambur, 24 W. R., 129). In a suit to set aside the sale of a *patni* taluk for arrears of rent, in which it was shown that the notice of sale, after having been placed for a time on the kachari of the farmer of the taluks in the mofussil, was then removed and served personally on the defaulter who lived in a distant mahal, it was held that, as the object of serving a notice of sale was both to acquaint the defaulter of its approach, and to enable the under-tenants on the taluk to preserve their own rights, and as both these objects were attained in this case, a "sufficient plea" had not been made out for setting aside the sale, although the Court prescribed by law had not been precisely followed—(Gourilal v. Jodhistir, 25 W. R., 141). This decision was dissented from in (Bhagwan Chunder v. Sirdar Ali, 1 L. R., 4 Cal., 41,) in which it was held that, "although the provisions of section 8, clause 2, of Regulation VIII of 1819, specifying the manner in which proof should be given of service of notice of sale, are merely directory, it is nevertheless absolutely essential to the validity of a sale under the Regulation that the notice of such sale should be served in strict compliance with the directions given in the same clause and section of the Regulation."

In the case of Sona Bibi v. Lalchand, 9 W. R., 242, it was held to be a far more exact compliance with the spirit of Regulation VIII of 1819 to serve the notice which it enjoins at the place in which the defendant's gomashta was transacting and did habitually transact business, than at the kachari which had not been in use. Where the kachari was in a ruinous state, and it was held sufficient to have published or served the notice at the house (apparently in a village, which was on the land of the defaulter) where the defaulter's gomashta resided and usually transacted business, and where the zemindar himself frequently transacted business. (Hanooman alias Nonna Bibi v. Bipracharan, 20 W. R., 132.) In a suit brought against the zemindar to reverse the sale of a *patni* tenure on the ground that the notice required by this clause had not been served upon the *patnidar*, it was held that, with reference to section 106 of the Indian Evidence Act, the burden of proving service of the notice was upon the zemindar—(Doorga Churan v. Synd Nojanuddin, 21 W. R., 397). If a *patni* is sold for arrears of rent without the notice required by Regulation VIII of 1819, the sale is informal and can be set aside notwithstanding the *bona fides* of the purchase (Mobarak Ali v. Amir Ali, 21 W. R., 252). The sale will be also set aside, if the sale notice were not stuck upon some conspicuous part of the Collector's kachari and of the zemindar's kachari—(Baikuntanath v. Mahtab Chand, 9 B. L. R., 87). The words "*the land of the defaulter*," probably mean the land of the *patni* in arrear—(Latfannisa Begum v. Ram Chandra, S. D. R. for 1848, 371). It will be observed that the law requires the publication of the notice in three ways, viz., (1) by sticking it up in some conspicuous part of the Collector's kachari; (2) by sticking up a similar notice at the sadar kachari of the zemindar himself; (3) by publication of a copy or extract of such part of the notice as may apply to the individual case at the

kachari or at the principal town or village upon the land of the defaulter. The first two notices may be general notices containing the names of more than one defaulter. The third is a special notice for the individual. As to this third notice it has been doubted whether the defaulter's kachari, which is one of the places at which it may be published, must be upon the land of the defaulter. In *Mangazi Chuprasi v. Siva Sundari*, (21 W. R., 369,) it was published at the kachari of an adjacent taluk, at which kachari the business of the taluk in arrear was conducted, and this was held to be a sufficient compliance with the law. In a case of sale under Regulation VIII of 1819, where the *patni* was a small piece of land upon which there was no town or village or kachari of any kind, and the poon stuck up the notice in the Collector's office and also at the sadar kachari of the zemindar, and obtained receipt of the defaulter in the latter place, he was held to have carried out substantially, as far as he could, the provisions of the law regarding notice—(*Hurry Kristo v. Motcelal*, 14 W. R., 36). A personal service of notice of sale on a defaulting *patnidar* is not sufficient service under Regulation VIII of 1819, section 8, clause 2. All the forms should be gone into—(*Bykunta Nath v. Mahtab Chand*, 17 W. R., 447). A *patni* taluk was sold under clause 2 of section 8 for arrears. Before the sale the amount of rent due was paid to an Accountant in the Collector's office, but no notice was given to the *zemindar* or Collector. A suit was brought to set aside the sale on the ground that this was a good payment, and that, at the time of the sale, there was no arrear of rent due. It was decided that a payment under such circumstances was not sufficient and the suit was dismissed. Two out of the three Judges who decided the case were also of opinion that a payment even to the Collector without notice to the *zemindar* would not be sufficient—(*Krishna Mohan v. Aftabuddin Mahomed*, 8 B. L. R., 134; see *The Collector of Tipperah v. Goluk Chandra*, S. D. R. 1859, 521). Where there is no tender before sale of the amount of rent due, a sale under Regulation VIII of 1819 cannot be set aside merely because some charges were included which might not be strictly recoverable under the Regulation, where the *zemindar* in the petition clearly distinguished the amount due for rent from such charges—(*Srimati Dasi v. Pitambar*, 24 W. R., 123). A *patnidar* may deposit his rent in Court under the provisions of section 46 of Act VIII of 1869 (B.C.), the term under-tenant in that section being wide enough to include *patnidars*—(*Thakurdas v. Pyari Mohan*, 22 W. R., 431). Where a *zemindar* puts up a *patni* for sale, under Regulation VIII of 1819, knowing that the rent due to him has been paid into Court by the *patnidar*, the sale is invalid, even if the notice served on the *zemindar* was illegally served—(*Tara Sundari v. Rudha Sundan*, 24 W. R., 63). Where the sale of a *patni* for default was reversed on the ground of notice not having been served as required by law, the purchaser was entitled to a refund (with interest) and to his costs from the *zemindar*—(*Bykunta Nath v. Mahtab Chand*, 17 W. R., 447; *Moharukali v. Ameerah*, 21 W. R., 252; *Gourilal v. Joodhistir*, 25 W. R., 141). The defaulting *patnidar* whose taluk has been sold is not liable for rent accruing thereon after the sale—(*Gopi Krista v. Rani Kamal*, *Marshalls Rep.*, 212). The sale of a *patni* dissolves the relation of landlord and tenant between the *zemindar* and the *patnidar*—1 W. R., 133. Where a *patni* is sold for arrears, the *patnidar* who is sold out is not liable for the rent of the month in which the *zemindar* presented the petition enjoined by clause 3, section 8, Regulation VIII of 1819—(*Darimla v. Nilmoni*, 15 W. R., 180). There is nothing in Regulation VIII of 1819 which will allow a *patni* to be sold in separate lots, even though the whole *patni* be sold on the same day—(*Herbert Cowell*, Receiver of the estate of *Promotho Nath Deb v. Mohadeb Mundle*, 17 W. R., 182). Compare also—(*Moumotho Nath v. G. Glascott*, 20 W. R., 275).

9. All sales of saleable tenures applied for under the rules of the Regulation shall be made in public kachari; the land shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter; fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

If the fifteen per cent. be not paid in cash or in notes of the Bank of Bengal within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be re-sold on the same day, and if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given

of resale on the following day, that is on the ninth from the first sale, by proclaiming the same by beat of drum through the bazar of the sadar station of the zilla, after which the lot shall be resold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

* There is nothing in Regulation VIII of 1819 which will allow a *patni* to be sold in separate lots even though the whole *patni* be sold on the same day—17 R. W., 182, quoted elsewhere.

10. At the time of the sale, the notice previously stuck up in the *kachari* forms to be observed in shall be taken down, and the lots be called up successively in the order in which they may be found in that notice.

A person shall attend on the part of the zemindar, with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the *mufassal*, nor shall any lot be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read; the observance of which forms shall be recorded in a separate *rubakari* to be held upon each lot sold.

If the sale be of the description provided for in the third clause of section 8 of this Regulation, the *kistbandi* of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained.

The zemindar shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation.

11. *First.*—It is hereby declared, that any taluk or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives or assignees unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said taluk may have been held.

No transfer by sale, gift or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the zemindar to hold the tenure of his creation answerable, in the state in which he created it, for the rent which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such zemindar.

Second.—In like manner, on sale of a taluk for arrears, all leases originating

No under-lease to stand with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred; the possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the *rai-yats*; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

after sale.

Third.—Provided nevertheless that nothing herein contained shall be construed to entitle the purchaser of a taluk or other saleable tenure intermediate between the zemindar and actual cultivators to eject a khudkasht raiyat or resident and hereditary cultivator, nor to cancel *bond fide* engagements made with such tenants by the late incumbent or his representative, except it be proved in a regular suit, to be brought by such purchaser for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.

The effect of the sale is not *ipso facto* to cancel incumbrances created by the defaulter, but to render them voidable, if the purchaser desire to avoid them. C, the purchaser of a *patni* taluk, sold for arrears under the provisions of this Regulation, sued to enhance the rent of B, the holder of an under-tenure created by A, the defaulting *patnidar* whose rights had been sold. C, on purchasing A's *patni*, had not annulled B's under-tenure. B, in answer to the suit for enhancement of rent, pleaded a decision in a case between himself and A to the effect that his tenure was *intemari*. It was held that this decision was conclusive, and that B's rent could not be enhanced. The Court also observed that it must now be taken as an established principle of law that no sale for arrears of rent have *ipso facto* the effect of cancelling tenures created by defaulting owners, but merely give to the purchaser the power to do so, if he thinks proper; that the purchaser in the present case not having exercised this power took his purchase with the tenure as it was left by the defaulting *patnidar*, and therefore also subject to the decision in the case between A and B—(Madhu Sudan v. Ram Dhun, 3 B. L. R., 431). The purchaser of a *patni* taluk at a sale held under the Regulation sued a tenant within the taluk for a kabuliyat at an enhanced rate of rent. The former *patnidar* had brought a similar suit, in which it was decided that the rent was not liable to enhancement. Held, that the purchaser was bound by this decision, and that he did not occupy a position analogous to that of the purchaser of an estate sold for arrears of Government revenue, who is not the privy in estate of the former proprietor—(Tara Persad v. Ram Nursing, 6 B. L. R., App., 5). The only incumbrances which can be avoided are those created by the defaulting *patnidar*—(Kshan Chander v. Madhub Chunder, 1 R. J., P. J., 109). A purchaser is not entitled to collect rent at a higher rate than was demandable by his predecessor without establishing his right to do so—(Mojam v. Nilmoney, 21 W. R., 326; 13 B. L. R., 198). The purchaser in this case was the zemindar himself—See the notes under sections 10 to 12 of the Bengal Tenancy Act. A purchaser of a *patni* tenure sold in execution buys with all its liabilities, including instalments due to the zemindar, and cannot recover from the original *patnidar* the amount deposited by him a few days after his purchase in order to stay a sale by the zemindar under Regulation VIII of 1819—(Khoda Bux v. Dogunbari, Sp. W. R., 207). Upon the sale of a *patni* taluk for arrears of the landlord's rent, the purchaser acquires it free of all incumbrances created by the out-going *patnidar*—(Brojo Sundar v. Fatik Chander, 17 W. R., 407). The sale of a *patni* tenure for its own arrears under sections 59 and 60, Bengal Act VIII of 1869, does not *per se* avoid the *darpatni* tenures, but only renders them voidable at the option of the purchaser. An under-tenure is an incumbrance within the meaning of section 66, Bengal Act VIII of 1869—(Titu Bibi v. Mohes Chandra, 1 L. R., 9 Cal., 683). 3 C. L. R.

12. The rules of the preceding section, being declaratory of the principle

Above rule to take effect to be observed on all occasions wherein saleable tenures retrospectively. are made responsible for the zemindar's reserved rent, will equally apply to the case of taluks heretofore sold as to those that may be

Proviso. sold henceforward, if the sale shall have been fair and the process observed in conducting it shall have been

that recognized and in use in the district at the time of selling. Nothing But not to apply to however herein contained shall operate to the prejudice private transfers. of any agreement, express or implied, now subsisting between the purchaser of a taluk and the lessees of his predecessor. Neither shall the rule for the fall of under-tenures be considered to apply to any private transfer by a talukdar of his own interest, nor to a public sale in execution of a decree, nor to the case of a relinquishment by the talukdar in favor of the zemindar, nor to any act originating with the former holder other than default as

aforesaid. All such operations involve only a transfer of the tenure in the state in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant such as they may be, and is of course subject to any restriction put upon the tenure by his act.

13. *First.*—With reference to the injury that may be brought upon the holder of a taluk of the second degree by the operation of the preceding rules, in case the proprietor of the superior tenure purposely withholds the rent due from himself to the zemindar, after having realised, his own dues from the inferior tenantry, it is deemed necessary to allow such talukdars the means of saving their tenures from the ruin that must attend such a sale; and the following rules have accordingly been enacted for this purpose.

Second.—Whenever the tenure of a talukdar of the first degree may be advertised for sale in the manner required by the second and third clauses of section 8 of this Regulation for arrears of rent due to the zemindar, the talukdars of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into the Collectorate the amount of balance that may be declared due by the person attending on the part of the zemindar on the day appointed for sale; in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and should the amount lodged be sufficient, the sale shall not proceed, but after making good to the zemindar the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it.

Third.—If the amount so lodged shall be rent due by the inferior talukdar to the holder of the advertised tenure, the same shall be amount lodged being rent stated at the time of making the deposit, and the amount due from under-tenant; shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published.

Fourth.—If the person or persons making such a deposit, in order to stay and in case of amount the sale of the superior tenure, shall have already paid lodged being advanced from the whole of the rent due from himself or themselves, private funds. so that the amount lodged is an advance from private funds and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against, future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the taluk so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made upon mortgage, and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced, from any profits belonging thereto.

If the defaulter shall desire to recover his tenure from the hands of the person or persons who, by making the advance, may have acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced, with interest at the rate of twelve per cent. per annum up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realised from the usufruct of the tenure.

A tenure to stay a sale must be the whole of the zemindar's demand and without any condition as to its being kept in deposit by the Collector—(*Ram Churan v. Dropomayi*, 17 W. R., 122). There is nothing in Regulation VIII of 1819 empowering a patnidar to deposit rent in the Judge's Court or Collectorate before the day of sale, or giving such payment the effect of a payment to the zemindar or his agent, entitling the patnidar to ask to have the sale annulled—(*Kristo Mohan v. Aftabuddin Mahomed*, 15 W. R., 560). A person who was interested in a *patni* and knew that an alleged deposit by the darpatnidar under section 13 was a mere sham, and was merely a device to preserve the *patni taluk* in the hands of persons claiming to hold adversely to him, was held bound to challenge the deposit within twelve years from the time he knew of such deposit—(*Kanto Chunder v. Baman Das*, 25 W. R., 434). In the case of (*Ambika v. Pranhari*, 4 B. L. R., P. B., 77), the following question was referred to a Full Bench: "Whether an under-tenant who has saved the superior tenure from sale by deposit the amount of rent due from the holder of that tenure to the zemindar is bound to apply to the Collector for immediate possession of the tenure thus preserved from sale; or whether he is competent to sue for the recovery of the amount deposited by him in the ordinary way without making any such application." It was held (over-ruling *Kartik Surma v. Boido Nath*, 10 W. R., 205) that the under-tenant not only has the security of the tenure which he preserved and of which he can obtain possession on application to the Collector, but has also a right to recover the amount deposited by him as a loan in an ordinary suit. The payment must be made into Court, not to the zemindar out of Court, and it would seem that the payment must be sufficient to stay the sale of the *patni*—(*Mirza Mahomed Hossein Ali v. Rahaula*, 6 B. L. R., 81; 2 B. C., and C. R., 86). *Vide notes ante*.

The word "profits" in the 4th clause of section 13 of Regulation VIII of 1819 means that which is left to the tenure-holder after payments of the rent of the tenures. A person who enters into possession of a tenure as mortgagee under the provisions of that section is bound in the first place to pay the rent due to the landlord out of the collections before applying the same to the liquidation of his own debt, and the default is not to be liable for the rent of the tenure during the period of the possession by the person so holding it as mortgagee—(*Lala Bhabu Chandra v. Lalit Mohan*, 1. L. R., 12 Cal., 185). The direction, in section 13 of Regulation VIII of 1819, that money paid into Court by a talukdar in order to stay the final sale shall be deducted from any claim of rent that may at the time be pending on account of the year or months for which the notice of sale may have been published, is satisfied by payment not into Court, but to the zemindar. If a strictly literal construction were put upon the words "into Court" no payment effectual to stay the sale could be made, for "the Court" has nothing to do with these sales, which are managed by the Collector—(*Tarinee Debee v. Shama Charren*, 1. L. R., 8 Cal. 951). In a suit by the purchaser of a *patni* against the darpatnidar for arrears of rent of the year 1285 (1878), it appeared that before the plaintiff's purchase the darpatnidar had paid the amount of arrears of *patni* rent for the year 1284 (1877), in order to save the *patni* from being sold under Regulation VIII of 1819, and that the amount so paid considerably exceeded the darpatni rent due at the date of suit. *Held*, that the defendant was entitled to deduct from the rent claimed the amount paid under the Regulation in excess of the darpatni rent due up to the end of 1284—(*Noba Gopal v. Srinath*, 1. L. R., 8 Cal., 867). The zemindar of an estate, in which the plaintiff and defendant respectively had purchased *patni* and darpatni tenures, obtained decrees for arrears of rent accruing before their purchases, though one of the decrees was obtained subsequently to the defendant's purchase, and in execution of these decrees he advertised the *patni* for sale, and the amounts due were paid into Court by the defendant to protect the tenure from sale. In a suit by the patnidar against the darpatnidar for arrears of rent accruing due subsequently to the defendant's purchase: *Held* that the defendant was on the construction of section 13 of Reg. VIII of 1819, and section 62, Bengal Act VIII of 1869, entitled to set-off such payments against the plaintiff's claim—(*Lalit Mohan v. Srinibas*, 1. L. R., 13 Cal., 331).

14. *First*.—Should the balance claimed by a zemindar on account of the rent Sale not to be stayed of any under-tenure remain unpaid upon the day fixed unless arrear claim be for the sale of the tenure, the sale shall be made without lodged. out reserve, in the manner provided for in sections 9 and 10 of this Regulation; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged.

It shall, however, be competent to any party desirous of contesting the right But suit to lie for its of the zemindar to make the sale, whether on the ground reversal. of there having been no balance due, or on any other ground, to sue the zemindar for the reversal of the same, and upon establishing a sufficient plea to obtain a decree with full costs and damages.

The purchaser shall be made a party in such suits, and upon decree passing for reversal of the sale, the Court shall be careful to indemnify him against all loss, at the charge of the zemindar or person at whose suit the sale may have been made.

Second.—In cases also in which a talukdar may contest the zemindar's Defaulters may apply for demand of any arrear, as specified in the notice advertised, such talukdar shall be competent to apply for a summary investigation at any time within the period of notice; the zemindar shall then be called upon to furnish his kabuliyat and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale.

Such award, if so made, will of course regulate the ulterior process; but if the case be still pending, the lot shall be called up in its turn, notwithstanding the suit; and if the zemindar or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash,

or in Government securities, by the talukdar contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy, but by a regular action for damages and for a reversal of the sale.*

NOTES.—Clause 1, section 14, contemplates the sale of a putni taluk being stayed, not by any person depositing the amount due but by a party having a recognised interest in the putni—(*Krista Jeebun Bukshoo v. A. B. Mackintosh*, Sp. W. R., 53; vide notes under section 13). A, a zemindar, sold the rights of B, his putnidar, for arrears of rent, under Regulation VIII of 1819. This sale was subsequently set aside at the suit of B for irregularity. A then sued B for the arrears, under Act X of 1859, and B raised the defence that the suit was barred, more than 3 years having elapsed from the close of the year in which the arrears became due. *Held* (reversing the decision of the High Court), that upon the setting aside of the putni sale, the putnidar took back the estate subject to the obligation to pay the rent; that the particular arrears of rent claimed must be taken to have become due in the year which that restoration to possession took place, and plaintiff could sue within 3 years from the close of that year. Also *held*, that A was not guilty of a trespass in bringing the property to sale under a defective notice, and A could not have sued for the arrears pending the proceedings to set aside the sale—(*Swarna Moyee v. Shoshi Mukhi*, 2 B. L. R., 10 P. C.). The plaintiff's mother sued to recover a portion of a putni taluk, which she claimed under a will, and to which she would be entitled, whether the will was valid or not, as heir upon the death of the widow of the deceased owner. While this suit was pending the taluk was put up for sale for arrears of rent under the Regulation. She paid these arrears to prevent a sale. The suit abated by her death, and her daughter sued the shareholders in the taluk to recover the money so paid. It was held that she had such an interest as entitled her daughters to recover—(*Saroda Kumari Dasi v. Mohini Mohan Ghose*, 20 W. R., 270). A putni taluk belonging to several co-sharers was sold for arrears of rent. One of the co-sharers brought a suit in the Munsiff's Court to set aside the sale, valuing the subject matter according to his own share, and making his co-sharers defendants. *Held* that the suit could not be maintained in this form, that the cause of action was the sale of the whole estate, that the suit should have been framed and valued accordingly and brought in a Court in which the right of all the parties interested in setting aside the sale could have been declared in a single suit—(*Annodia Prosad Rai v. Erskine*, 2 B. L. R., 370). The decree of a Civil Court reversing a sale for non-service of the notice (see clause 2, section 8) shall provide for the return of the purchase-money—(*Sheik Abdullah v. Umed Ali*, 6 W. R., 331). If there was no arrear of rent at the date of sale, whether notice of the fact has been given to the Collector or not, the sale must be set aside. A summary enquiry as to the fact of an arrear may indeed be made under the above clause, but it is not imperative on the putnidar to demand such an enquiry: he may reserve the question for a regular suit, and if it appears that there was no arrear, the Court is (under clause 1, section 14) to take care that the purchaser be indemnified against loss accruing by reason of the sale being in consequence

* See Reg. VII of 1832, s. 16, cl. 3.

set aside—(*Sarup Chunder Bhumik v. Rajah Partab Chunder Singh*, 7 W. R., 219; 3 E. C. and O. R., 148). The fact that the receipt of the notice of sale was dated the 15th Bysak, and therefore did not show that the notice had been published at some time "previous to that day," so as to satisfy the provisions of section 8, clause 2 of Regulation VIII of 1819, was held not to be sufficient ground for setting aside the sale of a *putni* tenure for arrears of rent. There being nothing in the receipt to show the date on which the notice was published, no injury to the plaintiff having been proved, and it appearing that more than the time proscribed by the Regulation had elapsed before the sale actually took place, the Court refused to set aside the sale. It would not be a "sufficient plea" within the meaning of section 14 that the receipt had been obtained, or the notification published, or, instead of previous to the 18th Bysak—(*Matunga Chunrun Mitter v. Moorary Mehan Ghose*, 1. L. R., 1 Cal., 175; 24 W. R., 458); or that the notice, after having been placed at a time on the *kachari* of the former of the taluks in the mofussil, was then removed and served personally on the defaulter who lived in a distant mehal—(*Gowrilal Singh v. Joodhisteer Hazrah*, 1. L. R., 1 Cal., 359; 25 W. R., 141). Where *putni* taluk has been sold under the provisions of Regulation VIII of 1819, an unregistered shareholder therein is entitled to sue for a reversal of the sale under the provisions of section 14 of the same Regulation—(*Chunder Prosad v. Shubhadra Kumari*, 1. L. R., 12 Cal., 622). The defendants, after purchasing a *putni* taluk at an auction-sale for arrears of rent under Regulation VIII of 1819, granted a *darputni* lease to the plaintiffs (the former *darputnidars*) and received a bonus of Rs. 1,199. The auction-sale being five years afterwards set aside: Held that the plaintiffs were entitled to a refund of the bonus, although they had not been dispossessed, but had simply reverted to their former position as *darputnidars* under the former *putnidar*.—(*Tara Chand v. Ram Govind*, 1. L. R., 4 Cal., 778).

15. *First*.—So soon as the entire amount of the purchase-money shall have been paid in by the purchaser at any sale made under this Regulation, such purchaser shall receive from the officers conducting the sale a certificate of such payment.

The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the *kachari* of the zemindar, and upon furnishing security, if required, to the extent of half the juma or annual rent, he shall receive the usual *amaldastak* or order for possession, together with the notice to the *rayats* and others to attend and pay their rent henceforward to him.

The zemindar shall also be bound to furnish access to any papers connected with the tenure purchase, that may be forthcoming in his *kachari*, and should he in any manner delay the transfer in his office, or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the Collector; and he shall receive the orders for possession, and shall be put in possession, of the lands by means of the *nazir*, in the same manner as possession is obtained under a decree of Court. Provided, however, that if the delay be on account of the zemindars contesting the sufficiency of the security tendered, the rule contained in section 6 of the Regulation shall be observed.

A certificate of payment granted under the provisions of clause 1, section 15 of Regulation VIII of 1819, is admissible in evidence without being registered.

Quere. Whether a sale-certificate granted under Act X of 1877, section 316 (corresponding to section 259 of Act VIII of 1859), is admissible in evidence without being registered?—(*Abdool Aziz v. Badha Kant*, 1. L. R., 5 Cal., 226).

Second.—When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere with the collections of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Collector for the aid of the public officers in obtaining possession of his just rights.

A proclamation shall then issue under the seal and signature of the Collector declaring that the new incumbent having, by purchase at a sale for arrears of rent

due to the zemindar, acquired the entire rights and privileges attaching to the tenure of the late talukdar, in the state in which it was originally derived by him from the zemindar, he alone will be recognized as entitled to make the zemindari collections in the mofussil, and no payments made to any other individual will, on any account, be credited to the raiyats or others in any suit for rent or on any other occasion whatever when the same may be pleaded.

Third.—Should the late incumbent or his late under-tenants continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police officers and of all other public officers who may be at hand and capable of affording assistance shall be given to the new purchaser, on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

16. [Repealed by section 2 of Act VIII of 1865, B.C.]

17. *First.*—The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation.

Second.—One per cent. shall first be deducted from the net proceeds realised, and shall be carried to the account of Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this Regulation.

Third.—The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the taluk to sale) to the zemindar or other person to whom the same may be due; provided, however, that no former balances, beyond those of the current year (or of that immediately expired if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied. Such antecedent balances, if the zemindar shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become in fact mere personal debts of the individual talukdar, and must be recovered in the same way as other debts by a regular suit in the Court.

Fourth.—Any excess that may remain after satisfying the demand of the zemindar, in the manner above described, shall be forthwith sent by the officer conducting the sale to the treasury of the Collector or Assistant Collector of the district, to be there held in deposit to answer the claims of the talukdars of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest on the land composing the taluk sold, or on any part of it.

Fifth.—It shall be competent to any one conceiving himself to possess such an interest to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale. If the Court shall, on investigation, consider the plaintiff's claim to be an equitable one, the Court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances. If there be more claimants than one, payment shall not be

made from the deposit, until the whole of the claims be settled; and in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realised from him by the usual process for the execution of decrees.

The putnidar of a taluk granted a darputni to the defendants on the 10th February 1869. The same putnidar afterwards mortgaged the putni taluk to the plaintiffs, who obtained a decree on their mortgage on the 28th September 1874. The putni was sold for its own arrears on the 17th November 1876; after payment of rent and all expenses, there remained a surplus in the hands of the Collector, which was attached by the plaintiffs in execution of their decree on the 9th November 1876; on the 12th January 1877, the defendants instituted a suit against the putnidar, under clause 5, section 27, Regulation VIII of 1819, for compensation for the loss of the darputni, and obtained a decree, which the Court directed should be satisfied out of the surplus sale-proceeds; and the Collector, notwithstanding the plaintiffs' attachment, allowed the defendants to obtain the amount decreed out of the surplus sale-proceeds. It, a suit by the plaintiffs to recover the amount paid for compensation, on the ground that the plaintiffs' attachment was prior to defendants' suit,—*Held* that the defendants' decree must, notwithstanding the plaintiffs' attachment, be satisfied out of the surplus sale-proceeds in priority to the plaintiffs' decree.—(*Surnomoy v. The Land Mortgage Bank*, 1. L. R., 7 Cal., 173.)

Sixth.—Provided, however, that no talukdar of the second degree or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled by sale of the superior taluk, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

Seventh.—Should no claims upon the purchase-money of a taluk sold as above be brought forward by any under-tenants or assignees, within the period of two months from the date of sale, or should the amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit, or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the Court, of there being no claims to afford ground of detention for the whole or any part of the deposit; and upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt.

In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates, the amount shall be paid severally to their receipts by the Collector.

Eighth.—It shall be competent to any party interested in a deposit, to withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day, as shown by the Government Gazette last received.

In *Ishan Chन्द्रa Rai Pandah v. Tarini Prosad Ghose*, 2 Sevestre's Report, 84, this provision was applied, although there was a stipulation in the contract creating the darputni tenure, that the darputnidar would be entitled to damages if the putnidar allowed the putni tenure to be sold or cancelled—it being decided that this stipulation must be held to be applicable only if the putni were sold owing to the sole neglect or default of the putnidar in not paying his rent, and could not be equitably applied where the sales resulted from the darputnidar, failing to perform his contract and pay his own rent. The proviso in clause 6,

section 17, Regulation VIII of 1819, is substantially complied with, with reference to the uncertainty as to who was the person to whom rent was due, where payment is made for the period for which the rent of the superior landlord was unpaid—(Soorja Kumaree v. Degumbari, 21 W. R., 219).

Miscellaneous.

Abatement and deduction of rent.—A *putnidar* agreeing to pay the revenue out of his rent payable in monthly instalments, cannot deduct from an instalment of rent any portion of the revenue not payable till after the instalment is due—(Radha Monee Chowdrain v. Mr. James Gray, 12 W. R., 295). But it is contrary to the usage of the country for a *putnidar* to pay his rents by monthly *kists*, without a special agreement for that purpose—(Joy Kishan Mukerji v. Janki Nath Mukerji, 17 W. R., 471). A *putnidar* sued his zemindar and obtained a decree for abatement of the *putni* rent on the ground that the assets of the *putni* fall short of the amount stated in the lease; while this suit was pending in the Civil Court, the zemindar brought a suit for the rent of two years upon the full *jumma*; and though the *putnidar* objected that his suit for abatement was pending, the Collector decreed the rent suit in full. In execution the zemindar recovered the full rent; whereupon the *putnidar* sued for a refund of excess payment, and of the interest realised by the zemindar thereon. Held that the decree of the Revenue Court was suspended, and modified by the decrees of the Civil Court subsequently affirmed in appeal; that plaintiff's cause of action accrued on the date when the zemindar recovered rent in excess of what plaintiff was jointly liable for, and also interest on such excess; and that the abatement was to take effect from the commencement of the *putni* lease—(Rajah Nilmoney Sing Deo Bahadur v. Sharoda Pershad Mookerji, 18 W. R., 434). In a suit by a *putnidar* to recover rent in accordance with the terms of a *durputni* lease, the defendant claimed an abatement of his *putni* rent on the ground that his predecessor had obtained such abatement in a previous rent suit to which it appeared that the lessor's share was slightly less than what was described in the lease. Held, that unless the defendant could show that he had been damaged by the

held by him, may afterwards sue for a refund of the rent paid by him before instituting the suit for abatement of rent, in excess of the amount justly payable, notwithstanding that he might, if he had chosen, have included this claim in his suit for abatement of rent—(Okhoy Kumar Chattapadhyaya v. Mahatap Chunder Bahadur, 1 L. R., 5 Cal., 24). A *putnidar* may sue for abatement under section 23, Act X of 1859—(Ram Narain Banerji v. Jai Krishna Mukerji, B. L. R., Sup. Vol., F. B., 70). A granted to B a *patni* of a certain mouzah. Appertaining to the *patni* was a *bil*, stated in the agreement to be held of Government in *tjara*. It was agreed that on the expiry of the *tjara* lease A would resettle with Government for the *bil*; if not, B might settle, but if the *jumma* exceeded Rs. 40, the excess was to be paid by the *putnidar*. On the expiry of the *tjara*, the Government sold the *bil* to a third party, who took possession, whereupon B sued for the abatement of the *patni* rent. It was held that he was entitled to succeed. Fear, J., said: "I think it is now too late to say that the Revenue Courts have no jurisdiction to entertain a suit for abatement in all cases where the holding of the tenants has diminished since when he received possession from the landlord, whatever may have been the cause of the diminution, and whether it effected an absolute distinction of the subject or not—(Braja Nath Pal Chowdry v. Hiralal Pal, 1 B. L. R., A. C., 87). A suit by a *putnidar* for abatement of rent on the ground of fraud in the concealment of an intermediate tenure created by the zemindar, though it cannot be maintained under section 18, Act X of 1859, may yet be tried by the Collector under clause 3, section 23, Act X of 1859, which is wide enough to admit of such a case being tried in the Revenue Courts under its provisions—(Moulvi Sukar Ali A. Musst. Amala Ahalya, 8 W. R., 504, V. R. C. & C. R. Rent Rule 29).

Relinquishment.—A *putnidar* cannot throw up his *putni* of his own accord—(Hiralal Pal v. Nilmani Pal, 20 W. R., 383).

A *putnidar* may measure.—A *putnidar* applied under section 10, Act VI (B. C.) of 1862 to measure the *raiya*'s holdings separately. Between the *putnidar* and the *raiya*s, there was a *durputnidar* and *shikmi talukdars*. Held that the application was rightly refused, as the *raiya*s did not pay rent to him. It was observed, however, that the applicant might be entitled under section 9 of the same Act to make a general survey of the land comprising the *durputni*—(Dwarkanath Chakravarti v. Bhowani Kishan Chakravarti, 8 W. R., 11).

A *putnidar* entitled to partition.—A suit for partition will lie by a joint owner of a *putni*, but such partition will not affect the liabilities of the *putnidars* under their several

contracts with the zemindars. It may be laid down broadly that, in all cases of joint ownership, each party has a right to demand and enforce partition—in other words, a right to be placed in a position to enjoy his own right separately and without interruption or interference by others. The costs were directed to be borne in proportion by plaintiff and defendants, being the necessary expenses of obtaining a partition by a decree of Court, caused by not any wrongful act of the defendants, but by the nature of the tenancy—(Rani Shama Sundari Dasi v. Jardine Skinner, 3 B. L. R., Ap., 120).

Liability for dak charges.—The zemindar is primarily liable for the zemindari dak charges leviable under Act VIII (B.C.), of 1862, but if a patnidar were under the old law liable for these charges, or had been in the habit of paying them, Act VIII, not being intended to impose any new tax, but to consolidate and regulate a previously existing liability, would not alter any right a zemindar might have had to reimburse himself these charges from the under-holders. The case of Bisso Nath Sarkur v. Rani Surnamay, 4 W. R., 6, was remanded to ascertain whether the patnidar had been in the habit of bearing these charges. In the case of Saroda Sundari Debia v. Uma Charan Sarkar, 3 W. R., the terms of the lease were clear, and the patnidar was held liable. In Sarad Sundari Debia v. Tarini Charan Shaha, 3 W. R., S. C. & C. Ref. 19, and Rakhal Das Mukerji v. Rani Surnamay, 6 W. R., 100, the patnidar was held not liable under the term of the contract. So also in Rohini Kant Rai v. Trepura Sundari Dasi, 8 W. R., 45; The Maharajah of East Burdwan v. Shib Narain Rai, 4 R. C. & C. R., 247. A suit by a zemindar against a patnidar to recover the dak charges paid by the former, and founded in the contract between the parties, is a suit cognizable by Courts of Small Causes on those districts where such Court exists; and when tried by the Ordinary Civil Court, no special appeal lies, having advocation to section 27, Act XXIII of 1861—(H. S. Erskine v. Trilochan Chatterji, 9 W. R., 518; Maharajah Dheraj Mahab Chand Bahadur v. Radha Binode Chowdry, 8 W. R., 517).

Benami purchase.—Frosunno Kumar Pal Chowdry v. Kailash Chandra Pal Chowdry, 2 In. Jur. N. S., 327; B. L. R., Sup. Vol., F. B., 759; 8 W. R., 423; Mahomed Kadir v. Gopal Lal Thakur, 2 Sev., 861.

Limitation.—Rajnarain Rai v. Umesh Chunder Gupta, 8 W. R., 444; 4 R. C. & C. R., 261; Monmohini Dasi v. Must. Bishen Mayi Dasi, 8 W. R., 112.

Mesne profits.—Sristidhar Shaha v. Maharajah Jagudindra Bonwarri Gobind, 2 Sev. 310.

Refund.—Rajah Nilmani Sing v. Gordon, Stuart & Co., 9 W. R., 371. *Vide notes ante* in the Act.

Apportionment of the value of putni land taken for purposes.—When land was taken up for public purposes and a question arose as to the principle upon which the amount of compensation given by Government was to be divided between the zemindar and the patnidar, it was held, that the way to look at the case was that it is a sale by the zemindar and patnidar of their respective interest in the land; that the zemindar was entitled to his fixed rent if there was no abatement of the rent, and the patnidar continued to pay the same rent as before, there was nothing for which the zemindar ought to receive compensation; that the proper mode of settling the rights of the parties was to give the patnidar an abatement of rent in proportion to the quantity of land taken from him, and to compensate the zemindar for the loss of rent thus sustained by him; and that the amount of compensation should be divided accordingly. In the particular case the zemindar was allowed 16 years' purchase of the rent which he lost by the abatement given to the patnidar—(Rai Kishore Dasi v. Nilkanta De, 20 W. R., 370).

REGULATION I OF 1820.

Passed on the 14th of January 1820.

A Regulation for providing that all sales of certain taluks, made answerable by sale for arrears of the zemindar's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described.

1. Whereas it has been omitted to provide in the rules of Regulation VIII, 1819, whether, in case the proprietor of an estate paying

Preamble.

revenue to Government should desire to bring to sale a saleable tenure of the nature defined in clause first, section 8, of that Regulation, for the realization of arrears of rent due thereupon, by any legal process other than that prescribed by the second and third clauses of the said section, such sale

should be made in the public manner provided for the periodical sales therein described ;

and whereas it is consonant with justice, and was intended by the said Regulation, that, in every case of the sale of such tenures for arrears of the zemindar's rent, the sale should be public, for the security of the interests of the owner of the tenure sold ; which object can in no manner be duly secured except the sales to be so made be conducted by an officer of Government in the same manner as the periodical sales provided for by section 8 of the said Regulation :

the following additional rule has accordingly been passed by the Governor-General in Council, to take effect from the date of its promulgation, within the several districts of Bengal, including Mednipur.

2. *First*.—Whenever the proprietor of an estate paying revenue to Government shall desire to cause any tenure of the nature of those described in clause first, section 8, Regulation VIII, 1819, to be sold for arrears of rent due to him on account thereof, and shall, under any summary process authorized by the general Regulations, have acquired the

right of causing such sale to be made, the same shall be conducted, after application from the zemindar, by the Register or acting Register of the Zila or City Court, or, in his absence, by the person in charge of the office of Judge of the district, in the mode prescribed by Regulation VIII above quoted, for periodical sales.

Second.—Ten days' notice shall be given before proceeding to sale, by proclamation to be stuck up at the kachhari of the Court and at that of the Collector of the district.

Third.—The rules of sections 9, 11, 13, 15 and 17, Regulation VIII, 1819, are extended to all sales made after the manner herein provided.

Rules of Regulation VIII, 1819, for periodical sales for zemindar's arrears of rent, extended to other sales for rent.

Notice by proclamation.

Rules extended to sales hereunder.

ACT No. VIII B. C. OF 1865.

Received the Lieutenant-Governor's assent on the 10th of May 1865, and the Governor-General's assent on the 27th idem.

An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.

Whereas doubts have arisen, in consequence of the repeal of section 16 of Regulation VII of 1832, as to the authority by whom patni-taluks and other saleable under-tenures of the nature defined in clause 1 of section 8 of Regulation VIII of 1819 are to be sold for arrears of rent due to the proprietor on account thereof ; and whereas it is expedient to amend the law for the sale of under-tenures in satisfaction of decrees for the recovery of such arrears ; It is enacted as follows :—

1. The word "Collector" as used in this Act includes all officers exercising the full powers of a Collector of a district.

"Collector" defined. Words used in the singular number include the plural.

2.—[Repealed by Act No. XII of 1873.]

3. The sale for the recovery of arrears of rent of patni-taluks and other saleable under-tenures of the nature defined in clause 1 of section 8 of Regulation VIII of 1819 shall be conducted by the Collector of land-revenue in whose jurisdiction, as defined by Act VI of 1853, the lands lie, and all acts preparatory to, or connected with, the

Sale by whom conducted.

sale of such under-tenures as aforesaid, which, by Regulations VIII of 1819 and I of 1820, the -tdge is required to perform, shall be performed by the said Collector.

4. Whenever a decree for an arrear of rent due in respect of an under-tenure, saleable under the provisions of section 105 of Act X of 1859, shall have been obtained, and an application for the sale of the said under-tenure under the same section shall have been made and allowed, the Collector, in whose Court the decree is in course of execution, shall thereupon cause to be hung up in his own Court and in that of the Collector and the Judge of the district within which the land comprised in the under-tenure to be sold is situated, and to be affixed on some conspicuous place on the land and in the town or village in or nearest to which the said land is situated, a notice for the sale of the said under-tenure on some fixed date not less than twenty days from the hanging-up of the said notice in the Court in which the decree is in course of execution.

5. The said notice shall specify, in the words used in the plaint in the suit in which the decree was made, the name of the village, estate and pargana, or other local division, in which the land comprised in the said under-tenure is situated, the yearly rent payable under the said under-tenure, and the gross amount recoverable under the said decree.

6. If the sum due under the decree, together with interest to date of payment and all costs of process, be paid into Court at any time before the sale commences, whether by the defaulting holder of the under-tenure or any one on his behalf, or any one interested in the protection of the under-tenure, such sale shall not take place; and the provisions of section 13 of Regulation VIII of 1819, for the recovery of sums paid by other than the defaulting holder of the under-tenure to stay the sale of the under-tenure, shall be applicable to all similar payments made under this section.

7. The under-tenure shall be sold to the highest bidder in open Court.

8. The party who shall be declared to be the purchaser shall be required to deposit immediately, in cash or Government currency-notes, twenty-five per cent. of the amount of his bid; and, in default of such deposit, the under-tenure shall be put up again and sold forthwith, or on the next ensuing office-day.

9. The full amount of the purchase-money shall be made good by the purchaser before sunset of the eighth day from that on which the sale of the under-tenure took place, reckoning that day as one of the eight; or, if the eighth day be a Sunday or other close holiday, then on the first office-day after the eighth day; and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to the Government, and the under-tenure shall be re-sold, and the defaulting purchaser shall forfeit all claims thereto or to any part of the sum for which the said under-tenure may be subsequently sold.

If the proceeds of the sale which may be eventually completed be less than the price bid by the defaulting purchaser, the difference shall be leviable from him under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.

10. The provisions of all the sections of this Act with regard to sales shall also be applicable to all re-sales under this Act, which may be rendered necessary by the default of any purchaser.

Provisions as to sales to apply to re-sales.

11. When the purchase-money shall have been paid in full, the officer holding the sale shall give the purchaser a certificate in the form prescribed in the schedule annexed to this Act; and shall further, on the purchaser making application and depositing the requisite costs, depute an officer or amin to put him in possession of the under-tenure in the customary manner, and to publish the fact of the purchase to cultivators of the lands comprised therein.

12. From the proceeds of the sale of the under-tenure, the officer holding such sale shall repay to the judgment-creditor the necessary expenses incurred by him in procuring it; and, after satisfying the decree in execution of which the sale was made, shall hold the residue, if any, in deposit on account of the defaulting holder of the under-tenure.

13. An appeal shall lie to the Collector from any proceedings of a Deputy or Assistant Collector, if made within fifteen days; and to the Commissioner from any original proceedings of a Collector under this Act, if made within thirty days from the date of the sale: but no proceedings under this Act shall be reversed or modified in appeal, except upon the ground of irrelevancy of the law, or of such an irregularity in procedure as, in the opinion of the appellate authority, has caused injury to the interest of one of the parties to the suit in which the decree was passed.

14. No appeal as of right shall lie from any order passed in appeal under this Act; but a Commissioner in any case in which an appeal has been heard by a Collector, and the Board of Revenue in any case in which an appeal has been heard by the Commissioner, may call for the record at any time within three months from the date of the order passed in appeal, and pass thereon such orders as they may think proper.

15. If any sale of an under-tenure shall, under either of the two preceding sections, be set aside, the purchaser shall be entitled to receive back the purchase-money with or without interest, and in such manner as the appellate or revising authority may in each instance direct.

Any order for the recovery of the purchase-money or interest, passed by such appellate or revising authority as aforesaid, may be enforced by the process in force under decrees for the recovery of arrears of rent.

16. The purchaser of an under-tenure sold under this Act shall acquire it free from all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created, or by the subsequent written authority of the person who created it, his representatives or assignees.

Provided that nothing herein contained shall be held to entitle the purchaser to eject khudkasht rayats or resident and hereditary cultivators, nor to cancel *bond fide* engagements made with such class of rayats or cultivators aforesaid by the late incumbent of the under-tenure or his representatives, except it be proved, in a regular suit, to be brought by such purchaser for the adjustment of his rent, that a higher rent would have been demandable at the time such engagements were contracted by his predecessor.

Nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof, through whose default the tenure was brought to sale.

The purchaser of an under-tenure, the rent of which is in arrear, cannot be made person-

ally liable for that portion of the rent which accrued due before the date of his purchase.—(Bash Bihari v. Pyari Mohan, 3 C. L. R., 116). A certain chur having been converted into two estates paying Government revenue, the plaintiffs became the purchasers of one of those estates at a sale for arrears of revenue, and of the lease of the other at an auction sale for arrears of rent and brought a suit under section 37 of Act XI of 1885 and section 16 of Act VIII, B. C. of 1865 to avoid the tenures of the defendants who held in shikmi talukdari and howladari tenures, lands appertaining to both estates. The defendants admitted the alleged nature of their holdings but claimed exemption from eviction on the ground that their ancestor, more than 12 years before, had cleared and cultivated the land and built a house thereon, and that, since his death, they themselves had continued to cultivate the land and reside upon it: *Held* that the defendants were entitled to the benefit of the proviso in section 16 of Act VIII of 1865, the words of the proviso being wide enough to embrace every resident and hereditary cultivator *irrespective of his denomination*—(Sheik Mohammed Ahsanoolah v. Shamor Ali, 4 C. L. R., 165). See notes under section 11 of Regulation VIII of 1819. The purchase of an under-tenure sold under this Act shall apply to the zemindar or other landholder, within fifteen days from the day of sale, to have his name registered in the zemindar or other landholders' books as the purchaser, and shall execute a kabuliyaat on the same terms and conditions on which the under-tenure was held by the defaulter; and if such application be not made within fifteen days, it shall be lawful for the zemindar or other landholder to sue the said purchaser under the provisions of clause 1 of section 23 of Act X of 1859.

17. The purchaser of an under-tenure sold under this Act shall apply to the zemindar or other landholder, within fifteen days from the day of sale, to have his name registered in the zemindar or other landholder's books as the purchaser; and shall execute a kabuliyaat on the same terms and conditions on which the under-tenure was held by the defaulter; and if such application be not made within fifteen days it shall be lawful for the zemindar or other landholder to sue the said purchaser under the provisions of clause 1 of section 23 of Act X of 1859.

18. The provisions of section 3 shall be applicable to all sales held under Regulation VIII of 1819 previously to the passing of this Act; and no suit shall lie in respect of such sales on the plea of want of jurisdiction of the officer by whom they were conducted.

SCHEDULE

Referred to in Section 11.

I certify that A. B. has purchased under Act VIII of 1865, the under-tenure (as specified in the notice of sale) and that his purchase took effect on the _____ day of _____ (being the day after that fixed for the last day of payment)

(Signed) C. D. .
Collector.

PART IV.

THE SETTLEMENT LAWS.

REGULATION VIII OF 1793; REGULATION VII OF 1822; REGULATION IX OF 1825; REGULATION IV OF 1828; REGULATION IX OF 1833. .

N. B.—See clause (a) of section 195 of the Bengal Tenancy Act *ante*. Act VIII of 1879 B. C. has been repealed by the Bengal Tenancy Act.
For settlement rules of the Board of Revenue see pp. 353—400, *ante*.

A. D. 1793. REGULATION VIII.

A Regulation for re-enacting, with modifications and amendments, the rules for the Decennial Settlement of the public revenue payable from the lands of the Zemindars, independent Talukdars, and other actual Proprietors of Land, in Bengal, Behar, and Orissa, passed for those Provinces respectively on the 18th September 1789, the 25th November 1789, and the 10th February 1790, and subsequent dates.

1—3. [Repealed by Act XVI of 1876.]

4. The settlement, under certain restrictions and exceptions hereafter specified, shall be concluded with the actual proprietors of the soil, of whatever denomination, whether zemindars, talukdars, or chowdries.

5. [Repealed by Act XVI of 1874.]

This section ran as follows :

First. The talukdars to be considered the actual proprietors of the lands composing their taluks are the following :

Second. Talukdars who purchased their lands by private, or at public sale, or obtained them by gift from the zemindar, or other actual proprietor of land to whom they now pay the revenue assessed upon their taluks, or from his ancestors, subject to the payment of the established dues of Government, and who received deeds of sale, or gift of such land, from the zemindar, or sunnuds from the khalsah, making over to them his proprietary rights therein.

Third. Talukdars whose taluks were formed before the zemindar, or other actual proprietor of land to whom they now pay their revenue, or his ancestors, succeeded to the zemindari.

Fourth. Talukdars, the lands comprised in whose taluks, were never the property of the zemindar or other actual proprietor of the soil to whom they now pay their revenue, or his ancestors.

Fifth. Talukdars who have succeeded to taluks of the nature of those described in the preceding clauses, by right of purchase, gift, or inheritance, from the former proprietors of such taluks.

6—12. [Repealed by Act XVII of 1874.]

13. Talukdars, whose taluks have been ordered to be separated, are not to be permitted to pay the revenue assessed upon their lands, through the zemindars, or other actual proprietors of estates, as heretofore.

14. Talukdars, who in consequence of the rules in sections 5 and 9, may be separated from the zemindars, or other actual proprietors of estates through whom they heretofore paid their revenues, are to pay their revenue in future immediately into the collector's treasury, except in districts, where from the number of taluks, or other cause, this mode would be attended with considerable inconvenience, in which case *tehsildars*, or native collectors, are to be appointed to receive the revenue of the taluks in such districts.

15. Zemindars, or other actual proprietors of land, from whose zemindaries, or estates, taluks may be separated, shall not be appointed *tehsildars* to receive the revenue of the taluks so separated, but the office of *tehsildars* shall in every instance be given to some other person of character and responsibility, and the whole expense of it is to be defrayed by Government.

16—18. [*Repealed by Act XII of 1876.*]

Section 18 ran as follows :

18. *Mokurreedars holding lands of which they are not the actual proprietors, and whose mocurree grants have been obtained since the Company's accession to the dewanry, and never received the sanction of the Supreme Government, are to be dispossessed, and the settlement is to be made with the actual proprietors of soil, under this regulation. In cases, however, where such mocurreedars have been in possession of their mocurrees for a term exceeding twelve years, they are to receive during their lives, (subject to the pleasure of the Honourable Court of Directors) the difference between the jumma at which they held the lands, and that which may be now agreed to by the actual proprietors, added to the neat produce of the authorized sagar, resumed or abolished.*

19. *Istemrardars, however, who have not got possession of their lands to the exclusion, or without the consent of the actual proprietors, as the mocurreedars mentioned in section 18, are supposed to have done, but hold them of the proprietors on pottah, or lease, are to be considered as a species of pottah talukdars and the settlement is to be made with them as hereafter specified.*

20. *The exceptions to the general order for the conclusion of the decennial settlement with the actual proprietors of the soil, contained in section 4, include the following descriptions of persons: females, (excepting those whom the Governor-General in Council may judge competent to the management of their own estates,) minors, idiots, lunatics, or others rendered incapable of managing their lands by natural defects or infirmities of whatever nature; and persons, whom the Governor-General in Council may deem disqualified on account of their contumacy or notorious profligacy of character; provided however, with regard to the whole of these descriptions, that they are not partners in the zemindarees, independent taluks, or other estates held by them, with others of a different description, in which case, themselves or guardians are allowed, with their partners, to engage for the settlement of their lands, and elect a joint manager, under the restrictions hereafter mentioned.*

21. *The lands of disqualified proprietors coming within the above descriptions, are to be managed for the benefit of the proprietors, by persons appointed to the trust by Government in the mode prescribed in Regulation X of 1793, which also contains rules for the selection and conduct of such managers, as well as regarding the provision to be made for the support of the proprietors.*

22. *A further exception has been made to proprietors in balance to Government, and unable to pay the arrears due from them; in which instances, no settlement is to be concluded with the defaulting proprietors, but their lands are to be let in farm, or held khas, for a period of three years at the discretion of the collector.*

23—25. [*Repealed by Regulation XVII of 1805.*]

Section 23 ran as follows :

23. *Where more proprietors than one possess an undivided estate, and the whole of them be not within the description of disqualified landholders specified in Section 20, the settlement is to be made with them jointly, and they are to be required to elect a serbarakar or manager, who shall have the exclusive management of their land during the continuance of his appointment. The determination of the majority of the proprietors, or of the majority of those present, in the event of the absence of any, is to be binding on the remainder in the choice of a manager, and when the costs of proprietors are equal, the election of the manager is to be determined by the greater interest of the proprietors in the property. If in any case the interest also be equal, the manager is to be appointed by the Board of Revenue.*

26. The determination of the majority of the proprietors present, under the restrictions specified in section 23, is also to be binding on the remainder, in agreeing, or disagreeing to the *jumma* proposed for undivided estates: the *shareers* however, if dissatisfied, may obtain a division of their lands, and a proportionate allotment of the revenue assessed thereon, but at their own expence.

27. When a portion of land stands in the joint names of several proprietors, or of one for many, but each proprietor has his separate share in his own possession and management, or in that of an agent for him, the settlement is to be made for each share with the person in possession, and his land is to be held exclusively responsible for the revenue assessed upon it.

28, 29. [Repealed by Act XII of 1876.]

30. Where the property in lands is disputed, the settlement is to be made with the proprietor in possession, under the express declaration, that he is nevertheless liable to the claims upon the estate, which is to be transferable to any other person to whom the property may be subsequently adjudged.

31. If a case should occur, in which none of the claimants shall have been previously in possession, they are to be allowed to appoint a manager until their claims shall have been determined in the *dewanny adawlat* of the *zillah*: but if they should not agree to a manager, the lands are to be held *khas*, and the surplus produce, after discharging the revenue, is to be kept in deposit until the right of property shall be adjudged.

32. Where disputes exist concerning the boundaries of land, they are to be left to be adjusted in the *dewanny adawlat*, and the settlement is to be made in the mean time for the lands in possession of the disputing parties respectively.

33. The special rules for fixing the assessment of the three provinces respectively, adapted to the local circumstances of each, commence with section 68, and the following general rules have been prescribed in addition thereto.

34. The allowances of the *cauzies*, and *candongoes*, heretofore paid by the landholders, as well as any public pensions, hitherto paid through the landholders, are to be added to the amount of the *jumma*, and in future paid by the collectors of the revenue of the several *zillahs*, on the part of Government, under the rules and restrictions laid down for their guidance with regard to such payments, in the resolutions passed by the Governor-General in Council on the 10th June 1791, and re-enacted, with modifications by Regulation XXIV of 1793.*

35. The assessment is to be fixed exclusive, and independent of all duties, taxes, and other collections, known under the general denomination of *sayer*; the collections made in the *gunjes*, *hauts*, and *bazars*, situated within the limits of the town of Calcutta excepted, and excepting also the collections confirmed to the proprietors and holders of *gunjes*, *bazars*, and *hauts*, by the resolutions passed by the Governor-General in Council on the 11th of June 1790. Those resolutions, with the subsequent rules enacted for the regulation of the *abkaree*, or tax on intoxicating liquors and drugs, the abolition of the other *sayer* collections resumed, and the compensations to be made to the proprietors and farmers of estates in consequence of this resumption and abolition, are re-enacted with modifications, by Regulations XXVII and XXXIV of 1793.

36. The assessment is also to be fixed exclusive, and independent of all existing *lakhiraj* lands, whether exempted from the *kheraje* (or public revenue) with or without due authority.

* Repealed by Act XXII of 1871.

37. The above exception, however, is not meant to include the *malikanah* lands in Behar, or the *nanker*, *khamar*, *neej-joot*, and other private lands of the *zemindars* and independent *talukdars*, or other actual proprietors of land in Bengal and Midnapore, regarding which the following rules have been prescribed :

38. Where the *zemindars*, or other actual proprietors of land, in Behar, have resigned, or have been deprived of the management of their lands, retaining possession of a tithe as *malikanah*, the latter is to be re-annexed, and the *zemindars* or other actual proprietors are to be required to engage for the whole of their estates including the *malikanah* lands ; unless such lands be held as *malikanah* under grants made or confirmed by the Governor-General in Council, or the supreme authority of the country for the time being, and have been sold, or mortgaged, and given in possession to the mortgagees, in which case they are to be exempted from this rule. Grants for *malikanah* lands not made or confirmed by the supreme authority of the country, are declared invalid by the Regulations passed on the 8th August 1788. If the collectors, however, should be of opinion, that any material injury will be done to any individual by the execution of these orders, they are to report the circumstances to the Board of Revenue.

39. The *nanker*, *khamar*, *neej-joot*, and other private lands, appropriated by the *zemindars*, independent *talukdars*, and other actual proprietors of land, in Bengal and Orissa, to the subsistence of themselves and families, shall be also annexed to the *malguzaree* lands, and the ten years *jumma* fixed upon the whole under the following modification ; that such proprietors as may decline to engage for their lands, be allowed the option of retaining possession of their private lands above specified, upon the terms on which they have hitherto possessed them, provided they shall prove to the satisfaction of the Board of Revenue, that they held them under a similar tenure, previous to the 12th August 1765, the date of the grant of the *dewanny* to the Company, and have hitherto been permitted to keep possession of them, whenever their *zemindars* or estates have been held *khas* or let in farm, but not otherwise. In the event of such proof, and of their availing themselves of the option above given to retain possession of their private lands, a deduction adequate to the neat produce of such lands, is to be made from the amount of the allowance fixed for excluded proprietors by section 44.

40. The above consolidation of the *malguzaree* and private lands, is also to be made in the *taluks* continued under the proprietors on whom they have hitherto been dependent ; not, however, with a view of increasing the rents of the *talukdars*, but in order to make the whole of the lands composing their *taluks* answerable for their proportion of the public assessment allotted thereon.

41. The *chakeran* lands, or lands held by public officer, and private servants, in lieu of wages, are also not meant to be included in the exception contained in section 36. The whole of these lands in each province are to be annexed to the *malguzaree* lands, and declared responsible for the public revenue assessed on the *zemindars*, independent *taluks*, or other estates, in which they are included, in common with all other *malguzaree* lands therein.

42. [Repealed by Act XVI of 1874.]

43. In the event of any proprietor declining to engage for the settlement of his lands at the *jumma* proposed to him, the collector is to communicate the objections offered, with his opinion respecting them, to the Board of Revenue. That Board is to determine the proper assessment, after making such further enquiries as they may think necessary ; and the objecting proprietor is to be required to engage for such assessment without further delay ; and, in the event

of his refusal, which is to be given in writing, his lands are to be let in farm, or hold *khas*, as the Board of Revenue may in each instance think most expedient.

44—47. [Repealed by Act XVI of 1874.]

48. [Repealed by Act XII of 1876.]

49. It is to be understood, however, that *istemrardars* (*mocurreredars*) of the nature of those described in section 18, who have held their lands at a fixed rent for more than twelve years, are not liable to be assessed with any increase, either by the officers of Government, or by the *zemindar* or other actual proprietor of land, should he engage for his own lands. With regard to such *istemrardars* also, as have not held their lands at a fixed rent for so long a period, if the *zemindar* or other actual proprietor of land has bound himself by the deed which he may have executed, not to lay any increase upon them, he shall not be allowed to infringe the conditions of the deed for his own benefit, but must confine his demands to the rent he may have voluntarily agreed to receive.

50. This last restriction imposed on the *zemindar*, or other actual proprietor of land, in section 49, is not to be considered to preclude the officer of Government or farmer, in the event of the *zemindari* being held *khas*, or let in farm, from assessing such *istemrardars*, according to the general rate of the district.

51—55. [Repealed by Act VIII of 1886.] They ran as follows :

51. The following rules are prescribed to prevent undue exactions from the dependent talukdars.

First.—No *zemindar* or other actual proprietor of land, shall demand an increase from the talukdars dependent on him, although he should himself be subject to the payment of an increase of jumma to Government, except upon proof that he is entitled so to do, either by the special custom of the district, or by the conditions under which the talukdar holds his tenure; or that the talukdar by receiving abatements from his jumma, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Second.—If in any instance it be proved, that a *zemindar* or other actual proprietor of land, exacts more from a talukdar than he has a right to, the court shall adjudge him to pay a penalty of double the amount of such exaction, with all costs of suit to the party injured.

I. L. R., 4 Cal., 612; I. L. R., 3 Cal., 251; 15 B. L. R., 120; 12 B. L. R., 229, 4 B. L. R., 8, P. C.; 2 B. L. R., 1, P. C.; I. L. R., 2 Cal., 125; 21 W. R., 439; 19 W. R., 338.

52. The *zemindar* or other actual proprietor of land, is to let the remaining lands of his *zemindari* or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers, shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land, or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this section, are the following.

53. No person contracting with a *zemindar*, independent talukdar, or other actual proprietor, or employed by him in the management of the collections, shall be authorized to take charge of the lands or collections, without an *amilnamah*, or written commission, signed by such *zemindar*, independent talukdar, or other actual proprietor.

54. The impositions upon the *ruiyats*, under the domination of *abwab*, *muhtote*, and other appellations, from their number and uncertainty, having become intricate

to adjust, and a source of oppression to the raiyats; all proprietors of land and dependent talukdars, shall revise the same, in concert with the raiyats, and consolidate the whole with the *asul*, into one specific sum. In large *zomindarees*, or estates, the proprietors are to commence this simplification of the rents of their raiyats, in the *pargannahs* where the impositions are most numerous, and to proceed in it gradually, till completed, but so, that it be effected for the whole of their lands by the end of the Bengal year 1198, in the Bengal districts, and of the Fassily and Wallait year 1198, in the Behar and Orissa districts, these being the periods fixed for the delivery of *pottahs* as hereafter specified—(See section 2 of 1794).

55. No actual proprietor of land, or dependent talukdar, or farmer of land, of whatever description, shall impose any new *abwab* or *mulhot* upon the raiyats, under any pretence whatever. Every exaction of this nature shall be punished by a penalty equal to three times the amount imposed; and if, at any future period, it be discovered, that new *abwab* or *mulhot* have been imposed, the person imposing the same shall be liable to this penalty, for the entire period of such impositions.

56—57. [Repealed by Act XII of 1876.]

58. [Repealed by Reg. V of 1812, s. 3.]

59—60. [Repealed by Act XII of 1876.]

61. [Repealed by Act XVI of 1874.]

62*. First. The annual revenue to be paid to Government, from the estates of the proprietors of land with whom a settlement has been or may be concluded, having been declared fixed for ever; and courts of justice having been established, with powers to protect them against all demands exceeding that fixed revenue, whether made by the officers of Government or other persons, or by the authority of Government itself; and on the other hand, the grounds on which deductions and abatements were heretofore occasionally obtained by proprietors of estates when their *jumma* was liable to frequent variation, no longer existing; neither their rights, nor the value of their property, can be affected in future by the real produce of their estates being known. The rules therefore hereafter prescribed regarding *putwarees*, which are framed solely to facilitate the decision of suits in the courts of judicature, between proprietors and farmers of lands and persons paying rent or revenue to them, and to guard against any diminution of the fixed revenue of Government, or injustice to individuals, by enabling the collectors to procure the necessary information and accounts for allotting the public *jumma* upon estates that may be divided, agreeably to the principles prescribed in Regulation I of 1793, can be objected to by those proprietors only, who may have it in contemplation, in the event of the division or transfer of a portion of their estates, to deprive Government of a part of the fixed revenue, or defraud some of the partners in their estates, by obtaining a disproportionate allotment of the public assessment on the several shares; or to oppress the persons paying rent or revenue to them with impunity, by withholding from the courts of justice, the documents necessary to enable them to afford redress to the complainants. It being essential to the security of the public revenue, as well as of private rights and property, and at the same time consistent with the ancient usages of the country, and the declarations in the proclamation announcing the public assessment on the lands fixed for ever, that Government should have the means of counteracting such unjustifiable views, the following rules have been adopted.

* The whole of this Section was rescinded by Section 2, Regulation XI of 1817 in so far as regards the Ceded and Conquered Provinces, the Provinces of Bahar and Benares, the District of Cuttack, the Pargana of Pataspore &c.

Second. Every proprietor of land, who may not have established a putwaree in each village in his or her estate, to keep the accounts of the raiyats, as required by the original rules for the decennial settlement of the three provinces, shall immediately appoint a putwaree in each village for that purpose. All proprietors of estates are to deposit in the dewanny adawlut of the zillah, the collector's cutcherry, and the principal cutcherry in each mahul or purgunnah, a list of the putwarees in their respective estates, and the names of the villages, the accounts of which they may be severally appointed to keep. The proprietors are to notify every three months to the court and the collector, all vacancies that may occur, and the names of the persons whom they may appoint to fill them. The Board of Revenue are empowered to authorize any proprietor to reduce the number of putwarees in such proportion as they may think proper, in cases in which it may appear to them unnecessary to entertain a separate putwaree for each village.

Third. The putwarees in every estate, are to produce all accounts relating to the lands, produce, collections, and charges, of the village or villages, the accounts of which may be kept by them respectively, and to furnish every information and explanation that may be required regarding them, whenever they may be required by any court of justice to adjust any suit that may be depending before the court between the proprietor or farmer of the estate, and the raiyats, or any persons paying rent or revenue to them, or any other suit.

Fourth. The putwarees in each estate, shall also produce the accounts specified in the preceding clause, and furnish every explanation and information that may be required respecting them, for the allotment of the public revenue, agreeably to the principles laid down in Regulation 1 of 1793, in the event of the whole or any portion of the estates being directed to be disposed of at public sale, or being transferred by any private act of the proprietor or proprietors, or of the estate being ordered to be divided pursuant to a decree of a court of judicature, or, where it may be a joint estate, in consequence of the request of one or more of the proprietors. But no collector is to require a putwaree to attend him, and produce his accounts, but for the purposes above-mentioned, or in any other cases, in which they may be expressly empowered to require them, by any regulation printed and published in the manner directed in Regulation XLI of 1793. If any collector shall require the putwarees of any village or villages to attend him, and produce the village accounts, for purposes, or in cases in which he may not be authorized to inspect them, the court of dewanny adawlut, upon the circumstances being represented to it by the proprietor of the estate, is empowered to make an order to prohibit the collector requiring the accounts, and in the event of his repeating the requisition, to adjudge him to pay a fine to the proprietor of the estate of such sum as to the court may appear proper, and to levy the fine in the mode in which the courts are empowered to levy fines from the collectors in the suits described in Section 33, Regulation XIV of 1793.

Fifth. When a collector shall require the attendance of a putwaree for the examination of his accounts, either before him, or any officer whom he may depute for the purpose, he is to serve such putwaree with a written notice under his official signature, and the seal of the zillah, to attend with the accounts required, which are to be particularized in the notice. If he shall omit to attend with the accounts by the limited time, and shall not show good cause to the collector for the omission, the collector is authorized to represent the circumstances through the vakeel of Government to the court of dewanny adawlut of the zillah, the judge of which, provided there shall appear to him sufficient cause for so doing, may order such putwaree to be committed to close custody until he produces the accounts. The courts are to observe the same process with putwarees who may omit to attend with their accounts when required, for the adjustment of any matter or dispute depending before the courts.

Sixth. Putwarees shall be required to swear to the truth of the accounts they may produce when deemed necessary, and in the event of the collector having occasion to proceed in person, or to depute an officer to examine any village accounts on the spot, the judge, upon application being made to him for that purpose by the collector through the vakeel of Government, may grant to him, or to such officer, a commission to swear the several putwarees whose accounts are to be inspected, inserting in the commission the name of each putwaree, to be sworn. If the collector shall have occasion to examine the accounts of a putwaree at the station at which the court may be established, he is to cause him to be sworn before the court, if he shall judge it necessary to require him to make oath to the truth of his accounts.

Seventh. If a putwaree shall have sworn to the truth of any account that he may have been required to produce before a court of justice, for the purpose of deciding any matter before the court, and the accounts shall afterwards be found to have been fabricated, or altered, or not to be the true accounts, the judge of the court is empowered to commit him to be tried for perjury before the court of circuit.

Eighth. If a putwaree shall have been sworn before a judge, or before a collector, or the officer of a collector, to any accounts that he may have been required to produce before the collector, or his officer, in a case in which the collector may have been empowered to require him to produce such accounts, and the accounts shall afterwards appear to have been fabricated or altered, or not to be the true accounts, the collector is empowered to employ the vakeel of Government to prosecute such putwaree for perjury. In the cases specified in this and the preceding clause, if it shall be proved to the satisfaction of the court that the accounts were fabricated, altered, or changed, by the orders, or with the knowledge or connivance of the proprietor or farmer of the estate, the court shall impose such fine upon the proprietor or farmer so offending, as may appear to it proper, upon a consideration of the case, and the situation and circumstances of the offender.

Ninth. Upon the accounts of any village being ordered to be produced, if it shall be found that no putwaree has been appointed to keep the accounts of the raiyats, in conformity to the rules prescribed in clause second, the court, provided it be a case in which the requisition of the accounts may be authorized, shall fine the proprietor for the first offence, in such sum as it may judge proper, upon a consideration of his or her situation and circumstances, and the nature of the case; and for the second offence, twice the amount of the fine for the first; and for the third and every subsequent offence, double the amount of the fine for the preceding one. If the accounts shall have been required by the collector, he is to order the vakeel of Government to sue the proprietor on the part of Government under this section, for a breach of the rule in Clause second.

Tenth. The rules contained in this section, are hereby declared equally applicable to dependent taluks, as to estates paying revenue immediately to Government.

63. [Repealed by Act XVI of 1874.]

64—65. [Repealed by Act VIII of 1885.] They ran as follows:

64. The proprietors of land, dependent talukdars, and farmers of land, of every description, are to adjust the instalments of the rents receivable by them from their under-renters and raiyats, according to the time of reaping and selling the produce, and they shall be liable to be sued for damages for not conforming to this rule.

65. No proprietor of land, or dependent talukdar, shall contract any engagement, with any under-farmer, or authorize any act, contrary to the letter and meaning of this regulation.

66. Zemindars, independent talukdars, and other actual proprietors of land, dependent talukdars, farmers of land holding farms immediately of Government, and all persons farming lands of the above-mentioned descriptions of landholders

and farmers of land, and their respective officers, agents, servants, dependents, and *rai-yats*, are prohibited from taking cognizance of, or interfering in matters or causes coming within the jurisdiction of the courts of civil judicature, or the courts of circuit, or the magistrates, under pain of being liable to the payment of such fine to Government, and damages to the party injured, as the court of judicature in which they may be prosecuted for the act, may deem it proper to impose and award.

67. *Clauses 1—4. [Repealed by Act XII of 1876.]*

Fifth. In the original rules above-mentioned, it was also directed, that if in any instance the regulations should appear inapplicable to the circumstances of any particular district, the collector should attend to the spirit of them, and carry them into execution in such mode as circumstances might allow, reporting any alterations or modifications which he might deem necessary. This rule is to be considered still in force in forming any settlements which remain to be concluded, but it is not to be construed to empower the collector to exercise any judicial authority.

Sixth. It was further ordered in the original rules before mentioned, that if from want of sufficient materials or information, or on account of other impediments, the collectors should be unable to complete the settlement of all the *purgunnahs* under their charge, agreeably to the prescribed plan, within the year 1197 of the eras current in the three provinces respectively, the settlement was to be made for one year only, according to the principles laid down in the Regulations of the 25th April 1788, for the settlement of 1196, the year preceding the 1st year of the decennial settlement.

A. D. 1822. REGULATION VII.

A Regulation for declaring the principles according to which the Settlement of the Land Revenue in the Ceded and Conquered Provinces, including Outtuck, Puttas-pore, and its Dependancies, is to be hereafter made, and the powers and duties belonging to Collectors or other Officers employed in making, revising, or superintending settlements; for continuing, with certain exceptions, the existing leases within the said Provinces for a further term of five years; for defining, settling, and recording the rights and obligations of various classes and persons possessing an interest in the land, or in the rent or produce thereof; and for vesting the Revenue Authorities with judicial cognizance in certain cases of suits and claims relating to land, the rent and produce of land.

Whereas the existing settlement of the land revenue in the Ceded Provinces will expire with the present Fussilly year, and it has therefore become necessary to declare and enact the principles and rules according to which the demand of the state is therefore to be regulated, and the manner in which future settlements and revisions of settlements are to be conducted;—and whereas, a moderate assessment being equally conducive to the true interests of Government and to the well-being of its subjects, it is the wish and intention of Government, that in revising the existing settlement, the efforts of the revenue officers should chiefly be directed not to any general and extensive enhancement of the *jumma*, but to the objects of equalizing the public burthens and of ascertaining, settling, and recording the rights, interests, privileges, and properties of all persons and classes owning, occupying, managing, or cultivating the land, or gathering or disposing of its produce, or collecting or appropriating the rent or revenue payable on account of land, or the produce of land, or paying, or receiving any cesses,

contributions, or perquisites to or from any persons resident in, or owning, occupying, or holding parcel of any village or *mohaul*; and whereas, with these views and intentions, the Governor-General in Council has considered it to be expedient and proper, with the exception hereinafter specified, to continue the existing assessment in all cases in which the settlement has been formed with *zemindars* or other persons acknowledged as proprietors or possessors of a permanent interest in the *mohaul* for which they may have engaged, until a new settlement can be made, combining with the revision of the Government *jumma* and the deliberate investigation of the facts, by the determination of which its amount must be regulated, a full inquiry into, and a careful settlement of the rights and interests of all classes connected with the land; and whereas the same principles are applicable to the district of Cuttack, the *pargunnah* of Putaspore and its dependencies, of which the settlement will expire with the present Umlee year; and whereas it has appeared expedient to make special provision for the early settlement of the districts of Goruckpore, the *chuala* of Azimgurh, the *pargunnah* of Putaspore and its dependencies; and whereas it is also advisable to provide for the revision of the settlement of the conquered provinces and of the province of Bundelcund, pending the continuance of the existing leases; and whereas it is the desire of Government that the proceedings held and the records formed by the collectors, when making settlements or otherwise specially employed in conducting inquiries of the above nature, should be such, as that all demands, claims, and suits may be adjudged and determined according to the facts therein stated, until the same shall have been formally altered, or it shall be shewn by the result of a full investigation in a regular suit, that the proceeding or record of the collector was erroneous or incomplete; and whereas it is necessary to declare and define the powers and authority to be vested in collectors in the conduct of the said inquiries, and the adjustment of the differences arising out of, or made known by them; and whereas it further appears advisable that the revenue officers should, in certain cases, be vested with authority judicially to receive, hear, investigate, and determine suits, claims, and demands of the above description; and whereas it appears to be expedient, to declare and explain the views and intentions of Government relative to the rights to be enjoyed and exercised by the *sudder malguzars*, or persons admitted to engage for the payment of the Government revenue, and by persons collecting the rents of the land or revenue of Government, without being subject to the payment of any portion of it to the public treasury, such as *gagirdars* and other owners or managers of *lakhiraj* lands, and it is particularly necessary in the case of estates held in *putteedaree* or *bhyachara* tenure to make further provision for protecting the sharers who have not been admitted to engagement with Government, against the encroachments of the *sudder malguzar*, and likewise to secure the latter against the consequences of the embezzlement or misappropriation by the former, of the funds whence the Government revenue ought to be discharged.

For the purposes and objects above specified, the following rules have been enacted, to be in force from the date of their promulgation, throughout the Ceded and Conquered Provinces in the district of Cuttack, the *pargunnah* of Putaspore, and its dependencies.

2. Clauses 1—5. [Repealed by Act XVI of 1874.]

Sixth. If any *zemindar* and other *malguzar* as aforesaid, who may now or hereafter be under engagement for the payment of the revenue demandable by Government on account of any *mohaul*, shall be allowed by the revenue authorities to continue in the management of such *mohaul* after the expiration of such

engagement, and shall do or direct any act relative to the cultivation or management of such *mohaul*, or the settlement, assessment, or collection of the rents of such *mohaul*, in, or on account of any year subsequent to the term of such engagement, such *zemindar* or other *malguzar* aforesaid shall be held to be responsible on account of such year for the same revenue as may have been demandable from him for the year preceding, unless otherwise specially agreed upon. Provided further, that it shall be competent for collectors or other officers exercising the powers of collectors, with the sanction of the Board or commissioner to whom they may be subordinate, at any time, not being more than six months previous to the expiration of a settlement, to call upon the *zemindars* or other *malguzars*, as aforesaid, to declare, whether or not they are willing to continue their engagements for the ensuing year; and if such *zemindars* or other *malguzars* shall not forthwith notify their refusal to do so, they shall be held to have agreed to such an extension of their leases at the existing assessment, and so on, from year to year, as aforesaid. *Zemindars* or other *malguzars* who may be allowed to hold on from year to year, shall not be chargeable with any additional revenue on account of any year, unless the collector or other officer exercising the powers of collector, shall notify his intention to revise the assessment, on or before the commencement of such year, unless where otherwise specially provided.

See Reg. IX of 1833, s. 2.

3. With respect to estates which are at present let to farm, a settlement thereof shall be made on the expiration of the existing leases for such a period as the Governor-General in Council may direct. A preference shall be given to the *zemindars* or other persons possessing a permanent property in the *mohauls*, if willing to engage for the payment of the public revenue on reasonable terms: provided also, that in cases wherein such *mohauls* may be let in farm, the term of the lease granted to the farmers shall not exceed twelve years. The above rules shall likewise be applicable to estates now held *khas*. So in any cases wherein the *zemindars* and other proprietors may refuse to continue their existing engagements, or to enter into new engagements on equitable terms, it shall be competent to the revenue authorities to let the lands in farm, for such period not exceeding twelve years, as the Governor-General in Council shall appoint, or to assume the direct management of them, and to retain them under *khas* management during the period aforesaid, or such shorter period as may be judged proper. Provided further, that if in any case it shall appear to the revenue authorities, that the continuance or admission of any *raja*, *zemindar*, *talukdar*, or other person, who may have engaged, or may claim to engage for any *mohaul* or *mohauls*, in, or to the management of such *mohaul* or *mohauls*, would endanger the public tranquillity, or otherwise be seriously detrimental, it shall be their duty to report the circumstance to Government, and it shall be competent to the Governor-General in Council, by an order in Council, to cause such *mohaul* or *mohauls* to be held *khas* or let in farm, for such term as may appear expedient and proper, not exceeding the period above specified.

See Reg. IX of 1825.

4. In admitting particular parties to engage, it was in no degree the intention of Government to compromise private rights or privileges, or to vest the *sudder malguzars* with any rights not previously possessed by them, excepting in so far as their interest in the land for which they may have engaged, might be improved by the limitation of the Government demand, or otherwise by the resignation in their favour of rights previously vested in Government itself, or as it may have been found necessary with a view to the punctual reali-

sation of the public dues, to vest the *sudder malguzar*, by special regulation, with authority of distraint, or other powers of coercion over the under-tenants. On the contrary, it is the anxious desire of Government, and the bounden duty of its officers, to secure every one in the possession of the rights and privileges which he may lawfully possess, or be entitled to possess. In pursuance of this principle, it is hereby declared and enacted, that nothing in the above provisions for extending the existing leases, or in the stipulations of the existing settlements, do or shall be construed to bar the revenue officers duly empowered in that behalf, from interfering to adjust the respective rights of the *sudder malguzars* and their under-tenants; nor shall any claims to a remission or abatement of revenue be admitted on the ground of any decision or order passed in that behalf; but if such decision or order shall operate materially to reduce the profits derived by any *zemindar* or *malguzar* from the *mohaul* owned or managed by him, it shall be competent for such *zemindar* or *malguzar* to relinquish his engagements, and the revenue officers shall in such case proceed to make a settlement of the *mohaul de-novo*.

5. *First*. The provisions contained in the existing regulations, regarding the allowance to be made to *zemindars* and other *malguzars* who may be excluded from the management of *mohaul* owned or claimed by them, whether as *malikana* or *nankar*, are hereby rescinded.

Second. The proprietors of estate let in farm or held *khas* shall be entitled to receive an allowance of *malikana*, at such rate as the Board of Commissioners, or other authority exercising the powers of that Board, may determine; any thing in the existing regulations notwithstanding: the said *malikana* to be apportioned in cases in which several proprietors may have heretofore held an estate under one common assessment, whether in joint tenancy or otherwise, according to the shares of each respectively; provided also, that the *malikana* allowance granted to the proprietor or proprietors of any *mohaul*, shall not in any case be less than five per cent. on the net amount realized by Government from the lands; nor shall it exceed ten per cent. on that amount without the special sanction of the Governor-General in Council. Provided further, that if the said proprietors shall in any case be in the receipt of any perquisite or the profits of any lands in lieu of the *nankar* formerly granted to them by the native Governments, or otherwise in consideration of their proprietary tenure, the amount of such allowance shall be deducted from the *malikana* to which they are by this section declared to be entitled: provided also, that this rule shall not apply to such *zemindars* as may continue in the occupancy of their tenures, whilst the *mohaul* in which they are included is held *khas* or farmed, or of any part of them, that is to say, *zemindars* who may cultivate or lease their lands, and pay the revenue to the farmer or Government officer; nor without the special sanction of Government to any *malguzar*, *zemindar*, or other proprietor or holder of land who may directly or indirectly continue to draw any allowance from the *raiyyats* of the lands farmed or held *khas*: provided also, that *malguzars* not being actual proprietors of the land included in the estate for which they may have formerly been under engagements, though recorded in the accounts of past settlements as *zemindars*, *talukdars*, or the like, or being proprietors of a part only of such land, shall not receive the above allowance on the *jumma* of the estate, but shall receive such allowance in lieu of their title of management, as it may appear to Government to be equitable to assign, in addition to the *malikana* to which they may be entitled on account of any lands held by them in actual property, and of which they may not retain the occupancy: and no *malikana* shall be granted to any *sudder malguzar* on account of lands, the occupants of which may deny his right of property, until he shall have established his right by a

regular suit in a court of justice or to the satisfaction of the Board. But in such cases, such provision will be made for the intermediate support of the party, as the Governor-General in Council may, on the recommendation of the Board, see fit to direct.

See S. D. A. 1858, 886.

Third. Provided also, that if any *zemindar* or *sudder malguzar* shall have been called upon by a collector, or other officer exercising the powers of a collector, to state the highest amount of *jumma*, for the payment of which he may be willing to engage, and shall have stated the same accordingly; the sum so stated by such *zemindar* or *sudder malguzar*, and not the *jumma* ultimately realized by Government, shall form the basis on which his *malikana* allowance shall be adjusted; and in such case, it shall and may be lawful for the revenue authorities to limit the said allowance to five per cent. on the said sum, or to a portion thereof, according to the extent of the proprietary interest possessed by the said *zemindar* or *sudder malguzar*. Provided also, that if a *zemindar* or *sudder malguzar* when so called upon shall fail to specify or tender any sum as aforesaid, then, and in that case, the net revenue derived by Government from the *mohaul* on account of the year preceeding that in which the collector or other officer aforesaid may make the said requisition, shall be taken as the sum by which the amount of *malikana* (not being less than five, nor more than ten per cent. on the same) shall be adjusted.

See 9 W. R., 102; 2 B. L. R., Ap., 163; 4 B. L. R., 29; 19 W. R., 94.

6. *First.* In cases wherein the existing engagements may be continued under the rule contained in Section 2 of this Regulation, it shall and may be lawful for the collectors, with the sanction of the Board of Commissioners, to enter, at any time in the course thereof, on a revision of the settlement, notwithstanding such continuance of the existing leases, and to adopt such measures as may be requisite for ascertaining and determining the extent and produce of the lands and the amount of *jumma* properly demandable therefrom, and for procuring and recording the fullest possible information in regard to the rights, interests, privileges, and properties of the agricultural community; and to determine the same with the same powers and authority as they now are, or may hereafter be entitled to exercise, in forming the settlement of estates open to re-assessment.

Second. The said revision of the settlement shall be made village by village and *mohaul* by *mohaul*, and such number of *mohauls* shall be revised in each year as the Board, under the orders of the Governor-General in Council, may direct.

Third. Such revision of the settlement shall not operate to disturb the existing engagements during the period for which they may be continued under the provisions of Section 2. of this Regulation, in so far as such engagements relate to the amount of *jumma* demandable by Government: but the said engagements shall be held and considered to include only such villages and lands as may be specified in the proceedings or accounts of the settlement last concluded; and if on the revision of the settlement of any *mohaul* it shall be found that there has been any material error or concealment of lands belonging to such *mohaul*, the collector shall be authorized, subject to the orders of the Board, separately to assess the lands so withheld from the knowledge of the revenue authorities, in the same manner and with the same powers as he would assess an unsettled *mohaul*. Provided also, that nothing in this, or the preceding sections, shall be construed to prevent the revenue officers from passing and enforcing such orders in regard to the rights and interests to be enjoyed by the different classes or persons connected with any *mohaul*, during the period for which the

existing settlement has been extended, as they may or shall be authorized to pass or enforce, when adjusting the assessment of an unsettled *mohaul*.

See 4 B. L. R., 36, P. C.

Fourth. It shall in like manner be competent to the collectors in the conquered provinces, and in the province of Bundelcund, to enter on a revision of the settlement under the provisions contained in the preceding clauses of this section, during the continuance of the existing leases.

7. First. When a collector in the ceded provinces or in the province of Cuttack shall have completed the revision of the settlement of any *mohauls* under the rules contained in the preceding section, it shall and may be lawful for him, subject to the orders of the Board of Commissioners and of Government, to grant to the proprietors, if willing to engage on adequate terms, renewed leases for such further term of years subsequent to the year 1234 Fussily or Umlee, as the Governor-General in Council may direct.

Second. The assessment to be demanded on account of the years subsequent to the year 1234 Fussily, to which leases renewed as above may extend, shall be fixed with reference to the produce and capabilities of the land, as ascertained at the time when the revision of the settlement shall be made, unless under special circumstances justifying a prospective enhancement of the Government demand. Provided also, that the amount of such assessment shall not be raised above that of the present *jumma*, unless it shall clearly appear, that the net profits to be derived from the land by the *zemindars* and others who may be entitled to share in the profits arising out of the limitation of the Government demand will exceed 1-5th of that amount: and in cases wherein any increase may be demanded, the assessment shall be so regulated as to leave the *zemindars* and others aforesaid a net profit of twenty per cent. on the amount of the *jumma* payable by or through them respectively. No abatement on the existing *jumma* will be allowed, unless on the clearest grounds of necessity.*

Third. The *pottahs* granted on such revised settlements shall be held only to secure the *malguzars* from further demand during the term of their respective leases, on account of the lands specified in it, or described in the settlement *roobakaree* of the collector, with such allowance for error as may be distinctly declared at the time of settlement. *Zemindars* and other persons entering into engagements will be required therefore to afford the fullest and most correct information in regard to the *rucla* of the *mohauls* for which they may engage.

Fourth. In like manner it shall and may be lawful for collectors in the conquered provinces and in the province of Bundelcund, to grant renewed leases for a further term of years subsequent to the expiration of the existing settlement, subject to the same rules, restrictions, and provisions, as are enacted in the preceding clauses relatively to the ceded provinces.

Fifth. If any *zemindar* or other *sudler malguzar*, the settlement of whose estate may be revised under the above rules, shall refuse to enter into suitable engagements for a further period beyond the term of the then current lease, or, if after such revision, the revenue authorities shall under any other circumstances deem it expedient to postpone taking further engagements for the payment of the revenue of any *mohauls* until the expiration of the current leases, it shall be competent to them to do so; and in such case, the several rules contained in Section 3. of this Regulation relative to estates of which the settlement will expire with the present year, shall, on the expiration of the said leases, be and be held applicable to such *mohauls*.

Sixth. The same rules shall also be applicable to the several *mohauls* within the district of Goruckpore, the *chulah* Azimghur, the *pergunnah* Putaspore and its dependencies, as they may respectively become, or be declared open for re-settlement.

See Reg. IX of 1833, s. 2.

8. Where the waste land belonging to or adjoining any *mohaul*, is very extensive, so as considerably to exceed the quantity required for pasturage or otherwise usefully appropriated, it shall be competent to the revenue officers to grant leases for the same, to any persons who may be willing to undertake the cultivation, in perpetuity, or for such periods as the Governor-General in Council shall determine; and to assign to the *zemindars* or others who may establish a right of property in the lands so granted, an allowance equivalent to ten per cent. on the amount payable to Government by the lessees, in lieu and bar of all claims to or in the waste lands so granted, or such other perquisites or privileges as by the custom of the country they may appear in such cases entitled to receive.

9. *First.* It shall be the duty of collectors and other officers exercising the powers of collectors, on the occasion of making or revising settlements of the land revenue, to unite with the adjustment of the assessment and the investigation of the extent and produce of the lands, the object of ascertaining and recording the fullest possible information in regard to landed tenures, the rights, interests, and privileges of the various classes of the agricultural community. For this purpose, their proceedings shall embrace the formation of as accurate a record as possible, of all local usages connected with landed tenures, as full as practicable a specification of all persons enjoying the possession and property of the soil, or vested with any heritable or transferable interest in the land or the rents of it, care being taken to distinguish the different modes of possession and property, and the real nature and extent of the interests held, more especially where several persons may hold interests in the same subject matter of different kinds or degrees. This record shall in *putteedaree bhyachara* villages or the like, include an accurate register of all the coparceners, not merely the heads of divisions, such as the *puttees*, *thokes*, or *bahrees*, but also as far as possible of every person who occupies land, disposes of its produce, or receives rent as proprietor, or as agent for one or more proprietors holding land and disposing of its produce or receiving the rents of it in common, with a detailed statement of the interior arrangements adopted by the brotherhood, for the distribution of the profits derived from sources common to the coparcenency where any such exist, and for determining the share of the Government *jumma*, and of the village expenses which each parcener is to contribute, or the other modes in which the engaging parcener or intermediate *putteedars* and *bahreedars* collect from the cultivators. A record shall likewise be formed of the rates per *beegha* of each description of land or kind of produce, demandable from the resident cultivators, not claiming any transferable property in the soil, whether possessing the right of hereditary occupancy or not, and the respective shares of the *sudder malguzar* or other manager and the cultivator, in lands cultivated under *kunkoot*, *bataie*, or similar engagements, with a distinct specification of all cesses or extra collections made by the *malguzar* or village manager or others. The names of all the village *putwarees* and village watchmen shall also be registered, with a statement of the amount and nature of the allowances assigned to them. And all *lakheraj* tenures shall be carefully recorded, with a specification of the nature of the tenure. The information collected on the above points shall be so arranged and recorded, as to admit of, an immediate reference hereafter by the courts of judicature: it

being understood and declared, that all decisions on the demands of the *zemindars* shall hereafter be regulated by the rates of rent and modes of payment avowed and ascertained at the settlement, and recorded in the collector's proceedings, until distinctly altered by mutual agreement, or after full investigation in a regular suit : and all cesses or collections not avowed and sanctioned, nor taken into account in fixing the Government *jumma*, shall be held illegal and unauthorized, unless now or hereafter specially sanctioned by Government.

Second. Provided also, that it shall be competent to collectors and other officers as aforesaid (subject to the orders of the Board of Commissioners) to grant *pottahs* to the several *mofussil zemindars* and *raiyats*, or other owners or occupants of land, for the land owned or occupied by them, specifying the amount to be paid by them, and all the conditions attaching to their tenure, and a register of all *pottahs* so granted shall form a part of the *roobakarees* of settlement.

Third. Provided, however, that if from the number of estates, of which the leases may at once expire in any district, or from any other special cause, it shall be found necessary for the security of the Government revenue, to take engagements from any *zemindar*, *malguzar*, or farmer, without completing the detailed inquiries above directed, it shall be competent to the Boards of Revenue, or other authority exercising the powers of such a Board, to cause engagements for the revenue to be taken in the manner heretofore in use, reporting the circumstances to the Governor-General in Council : but the term of the engagements so taken shall not exceed five years, and the rules relative to the revision of the settlements of *mohauls*, of which the existing leases have been extended under the provisions of Section 2 of this Regulation, shall be equally applicable to estates for which such engagements shall be taken.

See s. 3, Reg. IX of 1833 ; 6 W. R., Act X, 5 ; 7 W. R., 453 ; W. R., Sp. Act X, 42, I. L. R., 1, All, 278, 446.

10. *First.* Of several parties possessing separate heritable and transferrable properties in any parcel of land, or in the produce or rent thereof ; such properties consisting of interests of different kinds : it shall be competent to the Governor-General in Council to determine and direct which of such parties shall be admitted to engage for the payment of the Government revenue ; due provision being made for securing the rights of the remaining parties. It is further hereby declared and enacted, that it is and shall be competent to the Governor-General in Council, in confirming the settlement of any *mohaul* in perpetuity or for a term of years, to determine and prescribe the manner and proportion in which the net rent or profit arising out of the limitation of the Government demand, shall be distributed among the different parties possessing an interest in the lands appertaining to such *mohaul*, or in the rent or produce of such lands or *mohaul*.

Second. In cases wherein any land appertaining to a *mohaul* hitherto recognized as the *talooka*, *zemindaree*, or the like of one or more *sudder malguzars*, may be owned or occupied by other persons holding under the *sudder malguzar*, and possessing an heritable and transferrable property therein, or a hereditary right of occupancy subject to the payment of a fixed rent, or of a rent determinable by a fixed principle, if the title of the said *sudder malguzar*, to engage for the revenue be upheld, and generally in cases wherein the tenure of an intermediate *malguzar* or manager between the Government and the proprietors or hereditary occupants of the soil may be maintained, whether the Government revenue be collected from the *zemindar*, *talukdar*, or other hereditary intermediate *malguzar*, or the *mohaul* be farmed or held *khas*, it shall be competent to the collector or other officer who may be employed in adjusting the *jumma* to

be assessed on such *mohaul*, with the sanction of the Board previously obtained, and subject to the orders and direction of that authority, to make a *mofussil* settlement with each of the proprietors or occupants aforesaid, for the land possessed by him, and to grant such proprietors or occupants *pottahs* defining the condition on which they are to hold their land, whether subordinate to the *sudder malguzar* or to the farmer or officer of Government employed in the *khass* management; and in all such cases, if engagements for the Government revenue of the *mohaul* be taken from the intermediate hereditary *malguzars*, the particulars of the *mofussil* settlement, when approved by the Board, shall be endorsed on the *pottah* to be granted to the *sudder malguzar*, or shall be so incorporated with the engagement taken from him as to form part of the same.

Third. In cases in which two or more persons may possess a joint property in any village, *mohaul*, or parcel of land, or in the rent or produce of any village, *mohaul*, or land, or in any part of such village, *mohaul*, land, rent, or produce, the property of such persons consisting of interests of the same kind, whether of the same extent or otherwise, as well as in cases wherein such property in any *mohaul*, village, land, produce, or rent, may be separately possessed by parties subject by prescriptive usage to common obligations, whether existing or contingent, it shall be competent to the collector or other officer exercising the powers of collector, subject to the orders and direction of the Board and of the Governor-General in Council, either to make a joint settlement with the parties collectively, or a majority of them, or with an agent appointed by them, or a majority of them, or to select one or more of them to undertake the management of the *mohaul* as *sudder malguzars*, due advertence being had to the wishes of all the coparceners, and to the past custom of the village or villages comprized in the *mohaul*.

Fourth. When it shall be determined to make a joint settlement for any village, *mohaul*, or parcel of land, with the parties possessing therein a joint property as aforesaid, the collector or other officer making the settlement shall give notice of his intention by a written proclamation to be stuck up in some public place within the village, *mohaul*, or land, and shall require all persons possessing therein a property as aforesaid, to attend, either in person or by representative duly authorized in the matter, within a reasonable period, at a stated place and time, and to declare their agreement or non-agreement to the *jumma* proposed to be assessed on the village or land.

Fifth. If any person or persons, when summoned as above, shall refuse, neglect, or omit to attend, either in person or by representative, such person or persons shall be held to be bound by the decision of the majority of those who may attend in agreeing or disagreeing to the *jumma*, and his or their interests and estates shall, unless otherwise specially allowed, be held responsible for the Government revenue, and be liable to sale in the event of any arrear accruing on account of the settlement.

Sixth. If any person or persons shall attend, and shall object to the *jumma* proposed to be assessed, then should a settlement be made with the other parties present, the objecting parties shall be left in the enjoyment of the same rights and interests, as they would enjoy in the event of the *mohaul* being farmed or held *khass*: and in so far as regards the lands, to which such rights and interests attach, the other parceners, if their engagements be extended thereto, shall be considered farmers of the Government revenue, to hold the same under leases of such term as may be determined and agreed upon under the general rules applicable to lands for which the proprietors may refuse to engage.

Seventh. When any *mohaul* or portion of a *mohaul* held by a number of cultivating proprietors in *puttedaree* or *bhyachara* tenure or the like, shall be let

in farm or held *khas*, the rent demandable from the proprietors of such *mohaul* or portion of *mohaul* on account of the land occupied and cultivated by themselves, shall be adjusted by the rates payable by *raiya*t or other resident cultivators not having a heritable and transferable property in the soil, for lands of a similar description in the same or in the adjoining villages, with a deduction of five per cent. on account of *malikana*, or such other rate, not being less than five per cent. as Government may determine.

Eighth. When it shall be determined to make a settlement of a *mohaul* of the above descriptions with one or more of the parceners selected to manage, collect, and account for the public revenue as *sudder malguzar*, then and in that case, the interests of the non-engaging parceners shall not be held answerable for the default of the *sudder malguzars*, save and except in so far as may be specifically provided. Such parceners shall, until regularly separated, continue to hold their lands as subordinate proprietors, subject to the payment of rent or revenue to the *sudder malguzar* at the rates and in the mode heretofore in use, excepting in so far as that usage may be affected by the determination of Government in regard to the distribution of the net rent or profit derived from the limitation of the Government demand, or by the rules now in force, or hereafter to be enacted, for vesting the *sudder malguzars* with specific powers over the subordinate tenants in the collection of the rent or revenue demandable from them. The responsibility attaching to the persons selected as *sudder malguzars*, and the conditions under which they are to hold that title of management, will in each case, be specifically declared at or after the time when the settlement is confirmed. The conditions and limitations under which the subordinate proprietors shall be admitted to separate engagements, will also be similarly declared.

Ninth. Provided further, that in all cases wherein different parcels of land belonging to any *mohaul* may be separately owned and occupied by different proprietors, or by different bodies of proprietors, it shall be competent to the Boards of Revenue, or other authority exercising the powers of that Board, to cause a separate settlement to be made for the land owned and occupied by each proprietor, or by each body of proprietors, and each parcel of land for which a separate settlement may be so made, shall be held exclusively responsible for the revenue assessed upon it. Provided also, that if the several parties possessing a joint property or separate properties subject to a common obligation as aforesaid, or any of them, shall apply to a collector or other officer making or revising a settlement, to have separate possession of their several share or shares in such joint property, or to be admitted to separate engagements, it shall be competent to such collector or other officer, with the sanction of the Board, or other authority to which he may be subordinate, to make a partition of the property among the different parties according to their respective interests, and to make a separate settlement with each of them, or with such as may desire to enter into separate engagements.

Tenth. In all cases wherein any proprietors may be excluded from engagements, the collector shall be careful to let it be known, that all persons possessing a property in the *mohaul* are entitled to have their names recorded in the *roobakaree* of settlement, with the amount or rate of the assessment demandable from each.

11. *First.* The collector's proceedings in forming the registry above directed, shall be founded on the basis of actual possession, and that officer shall in every instance be careful to record the precise nature of the authority on which the entries in his books may be made. In conformity with the above principle, it shall be competent to the collectors or other officers when making

or revising settlements, or otherwise deputed to investigate and determine the circumstances of any *mohaul*, and the nature of the tenures connected with it, to correct the errors or omissions of former settlements by admitting to engagements, or entering on the public records the names of persons found in the *bond fide* possession of land, or in the receipt of rent under a proprietary title, and in such cases, the collector will hold an official proceeding, explaining fully the grounds on which he may act.

12. *First.* In cases in which the proportion of the Government *jumma* and village expenses payable by each proprietor and by each body of proprietors comprised in the several *puttees*, *behrees* and other divisions of an estate held under *putteedaree* or *bhyachara* tenure or the like, may have been originally fixed on a measurement of the lands occupied by each, with reference to the quantity in cultivation, and may be liable by the usage of the country to periodical adjustment on the same principle, if the collector or other officers making or revising the settlement shall be satisfied, by examination of the *putwarees'* accounts or otherwise, that the contributions paid by any proprietor or body of proprietors as aforesaid, are materially in excess of the amount justly demandable from them, it shall be competent to him, with the previous sanction of the Board, to cause a new distribution to be made of the revenue and charges payable by each, with reference to the above principle, and to such resolutions as Government may have passed relative to the apportionment of the net rent or profits arising out of the limitation of the Government demand, and in the performance of this duty to employ the *canoongoe*, and such person or persons as he may judge it advisable to appoint, and to settle the *jumma* payable by the different parties according to the award of such person or persons, or otherwise, as shall appear to be just and equitable.

Second. In like manner in cases in which the several proprietors shall be entitled, not only to an adjustment from time to time of the *jumma* payable on account of the lands occupied by them, but likewise to a periodical partition of the lands of the village with reference to the share recorded as belonging to each, it shall be competent to the collector to cause a fresh partition of the lands and adjustment of the *jumma* to be made as above prescribed, and at the same time to fix and declare the period from which the arrangement finally settled is to have effect, and to adjust the claims of the parties relative to the revenue immediately paid by them as may appear equitable. Provided, however, that no such partition or adjustment shall be final, until confirmed by the Board of Commissioners, or other authority exercising the powers of that Board: provided also, that if any parties shall dispute the existence of the usage under which the partition of the lands shall have been made, and shall claim to be restored to possession of the lands which the collector may have transferred to another, or shall consider himself entitled to the benefit of a new partition of the lands comprised in the *mohaul* to which he may belong in any case in which the collector may have refused to order it, it shall be competent to the said party to bring a regular suit in the *zillah* court against the person or persons to whom the lands may have been transferred, or the person or persons who may resist the partition, to try the justness of the collector's decision; but if the existence of the usage shall be admitted or established, it shall not be competent to the courts of judicature to question the accuracy of the partition of the land or adjustment of the *jumma*, and whenever the decision of a collector for the partition of any land shall be set aside, it will of course belong to the revenue authorities to readjust the *jumma* with reference to the interests of the parties as defined and settled by the final decision of the courts of judicature, and to the conditions of the tenure, and to any general or special resolution of Government relative to the dis-

tribution of the net rent or profit arising out of the limitation of the public assessment.

13. Collectors and other officers exercising the powers of collectors shall not, unless where specially authorized in the manner prescribed in this or some other regulation, do any act tending to disturb possession, but shall leave the *adawlut* to investigate in a regular suit all claims of persons not in possession, but deeming themselves entitled to be so.

14. *First.* Collectors making or revising settlements shall, in cases in which any dispute may exist in regard to the nature of the tenure of any person occupying the soil, be competent to declare, in an official proceeding to be incorporated in the *roobakaree* of settlement, the nature and extent of the interests actually possessed by such occupant, referring to the denomination heretofore applied to him only as one means of proof in regard to the nature of the interests, but stating at length, with specification of any examination he may take for his satisfaction, the grounds of his determination; so also in cases of dispute regarding the extent of the interest belonging to any sharer in a village or villages held under *putteedarce*, *bhayachara*, or the like tenure, such sharer having actual possession of a portion of such village or villages, or being in the actual receipt as proprietor of a share of the joint profits of the land, it shall be competent to the collector to decide the point in the first instance in his *roobakaree* of settlement, and to enforce his decision, leaving the party who may deem himself aggrieved to seek redress by a regular suit in the courts to try the right; but nothing herein contained shall be construed to authorize the courts to interfere with the decision of the collector in regard to the amount or proportion of *jumma* to be assessed on any parcel of land, or in respect to the quantity and description of land to be assigned in partition to the holder of any specific share of a joint estate.

Second. The above rule shall not be construed to empower collectors, unless otherwise authorized, to take cognizance of any claim to receive a larger portion of the common profit than the claimant has hitherto enjoyed, or to hold a larger portion of the village or villages than he has hitherto occupied.

Third. The decisions passed by the collectors under the above powers, if not altered or annulled by the Board or by Government, shall be maintained by the courts, unless on investigation in a regular suit it shall appear that the possession held under such a decision is wrongful; and nothing herein contained shall be understood to authorize any court to interfere with the decision of the revenue authorities relative to the *jumma* to be assessed on any *mohaul* or portion of a *mohaul*, or to the extent and description of lands belonging to any *mohdul*, that may be assigned on the partition of the same to the several parcelers concerned.

Fourth. If any person shall complain to a collector or other officer making or revising the settlement of any *mohaul*, that he has been wrongfully dispossessed from any lands, premises, crops, orchards, pasture grounds, fisheries, wells, water-courses, tanks, reservoirs, or the like, within such *mohaul*, or of the rents, produce, or profits of such lands, premises, &c., the like as aforesaid, or that he has been wrongfully disturbed in the possession thereof, it shall be competent to the collector or other officer aforesaid, to inquire into the matter, and if the party so complaining shall appear to have been in possession in the year preceding that in which the complaint is brought, and there shall otherwise be reason to believe that he has been violently or wrongfully dispossessed or disturbed, it shall be competent to the collector to restore or confirm him; recording the grounds of his determination in a *roobakaree*, and the opposite party shall in such case be left to bring a regular suit in court to try the question of right. In like

manner should a collector or other officer as aforesaid, find that there exist in any *mohaul* of which he may be making or revising the settlement, any disputes relative to the possession of lands, premises, or the like, which it may be expedient to adjust, it shall be competent to the collector or other officer aforesaid to pass a decision determining the point of possession, leaving the question of right, if further disputed, to be settled by the result of a regular suit in the *adawlut*.

Fifth. The above provisions shall be held to apply to all cases in which a *zemindar* or under-tenant, whether farmer or *raiayat*, having by special deed or prescriptive title a right of occupancy, shall have been wrongfully ousted from the occupancy of lands held and cultivated by him in the preceding year, or in which the rents or profits of any land which were received by such dispossessed party in the preceding year, shall be withheld from him, without a legal award or a voluntary act of the party involving the transfer, renunciation, or relinquishment of such rents and profits. But the above rule shall not apply to any case in which the complaining party may have executed any deed, purporting to be a relinquishment of possession, unless it shall have been established by some judicial proceeding, that such deed was extorted by force and terror, nor to any cases wherein the complainant shall have in any way lost or relinquished possession previously to the commencement of the year preceding that in which the complaint may be preferred.

Sec I. L. R., 1 All., 613 ; 1 L. R., 4 Cal., 53.

15. In the settlement of any resumed *mohaul* held, or pretended to be held under *sunnu*s from the ruling power, or from the *amils* or other officers of the Government, whether such lands shall have been heretofore subject to the payment of revenue or otherwise, it shall be competent to the collector or other officer making the settlement to hear, try, and determine all claims to the property and possession of the land comprising such *mohaul*, or the rents or produce thereof, anything in the existing regulations notwithstanding, and subject to the orders and direction of the Board of Revenue, or other authority exercising the powers of that Board, to give possession to, and conclude a settlement with the party who may appear to have the best title, leaving other claimants to establish their claims by a regular suit in the *zillah* or provincial court, by which, according to the value of the interest at stake, all decisions passed by the revenue authorities under this section may on such suit being fully heard, sued, and determined, and not otherwise, be revised, annulled, or altered. The above rule shall not extend to lands held free of assessment under grants made by, or at the request of the proprietors themselves, or their representatives, the settlement of which shall ordinarily be made with the parties in possession, if willing to engage on adequate terms.

16. It shall be competent to the Governor-General in Council to grant to a collector making or revising the settlement of any *mohaul*, whether the same may have been held by a *lakheraj* tenure resumed, or being *malguzaree*, may have become open to resettlement in ordinary course, special authority to hear, try, and determine as above, all claims to the property and possession of the lands lying within such *mohaul*, or the rent or produce thereof, and to give possession to the party who may appear to have the best title, subject to the orders and direction of the Board, and further subject, as above, to the revision of the *zillah* or provincial court on a regular suit: provided also that whenever special authority may be given to any collector as aforesaid, notice of the order of Government shall be published by a proclamation within the *mohauls*, to which the authority so given may extend; and it shall be the duty of the collectors

and the Boards to see that such proclamation is duly made. But no decision passed by a collector under this or any other section whereby such notification is required, shall be disturbed by any court of judicature, otherwise than after a full and regular investigation of merits on the plea that proclamation was not made.

17. It shall be competent to collectors and other officers engaged in making or revising the settlement of any *pergunnah*, *mouzah*, or other local division, on the application of persons claiming a right of property in lands held free of assessment, or at a *mocurreree jumma*, under unquestioned grants from the ruling power, or from the *amil*, or other officers of Government, and situated within, or adjoining to such *pergunnah*, *mouzah*, or other local division, to receive, try, and determine the claim; and if satisfied that the applicants do possess, or are entitled to possess, a hereditary and transferable property in the land or the produce or rent thereof, the collector or other officer, with the sanction of Government previously obtained, shall be authorized to conclude a settlement with them on behalf of the *lakherajdar* or *mocurrereedar*, for such period as the Governor-General in Council may direct, and shall grant to each of the said proprietors *pottahs*, defining the conditions on which they are to hold their lands, subordinate to the *lakherajdar* or *mocurrereedar*. It shall further be competent to the collector, under the orders of the Board of Commissioners, to fix and declare the amount of *malikanah* or other proprietary allowance to be paid by such *lakherajdars* or *mocurrereedars* to the said proprietors, in the event of their being divested of the occupancy and management of their lands: provided, however, that either party who may be dissatisfied with the decision of the collector as to the question of the right of property, shall be at liberty to contest the same in a regular suit in the *adaulut*; but the courts shall not interfere to alter the terms on which the settlement may have been made by the collector with proprietors, or the amount of *malikanah* granted to such persons.

18. The collector shall in cases of doubt be the judge of the question of jurisdiction, subject to the orders of the Board and of Government, and the courts of judicature shall not disturb possession given by the collector, except on a regular suit, and on a decision as to the right.

19. *First.* It shall be competent to collectors, when prosecuting the above inquiries or hearing and trying the above suits or otherwise, when authorized in that behalf by the Board to which they may be subordinate, to require all *sudder malguzars* and other persons owning, occupying, managing, or cultivating any lands within or in the vicinity of the *mohaul* to which their inquiries may extend, or gathering or disposing of the produce thereof, or collecting, enjoying, or appropriating any rent or revenue derived therefrom, as well as the *gomash-tahs* or other agents employed by such persons in the management or cultivation of the land, or in the collection of the rent, produce, or revenue thereof, to attend and produce all accounts or other papers which they may respectively possess relative to such lands, produce, rent, or revenue, and to examine the said persons on oath, or *hulufnamah*, to the truth of the accounts produced, or on any other matter relating to such accounts, or regarding the lands, produce, rent, or revenue of the *mohaul*, or the rights and interests attaching to such lands, produce, rent, or revenue: provided, however, that no person shall be compelled to answer on oath or solemn declaration, any interrogation regarding matters wherein he may have an immediate personal interest in concealing the truth, or in uttering what is false, not being an interest arising out of fear, favour, or reward, or any corrupt bargain or agreement with another party.

Second. The rules contained in Section 11, Regulation II of 1819, relative to

the mode of serving process on persons who may be required to attend and produce accounts under the provisions of that Regulation, shall be and be held applicable to processes issued by collectors or other officers under the rules contained in this Regulation. In like manner the provisions of Sections 12 of the said Regulation shall be applicable to all *jutwarces*, *gomastahs*, or other persons, by whom the accounts of any lands regarding which the said inquiries may have been instituted may be kept, and who, after being duly summoned as aforesaid, may neglect or omit to produce any of the accounts required from them, or to give their evidence regarding them, or who may deliberately give a false deposition on oath or solemn declaration when summoned and examined as aforesaid, or who may alter, fabricate, falsify, or mutilate the accounts which they may be required to produce: provided further that collectors and others officers employed in the settlement of the land revenue, or in any of the inquiries specified in this Regulation, shall be vested with all the powers and authority which are or may be lawfully exercised by collectors in cases depending before them under Regulation II of 1819, and the rules contained in clause third, sections 13, 14, and 19 of the said regulation, shall be and be held applicable to all persons who may be summoned by any collector or other officer aforesaid, or who may resist the process of a collector issued under the rules of this Regulation, or who may refuse to take an oath or subscribe a solemn declaration when required, or who may deliberately give a false deposition on oath, or under a solemn declaration taken instead of an oath, or may cause or procure another to do so.

20. *First.* The powers specified in sections 11, 12, 14, 16, 17, 18, and 19 of this Regulation, shall be ordinarily exercised by collectors when employed in making or revising settlements of the land revenue, and shall extend to all the lands comprized in the *pergunnah* in which he may be so employed; but it shall be competent to the Government by an order in Council, to be publicly proclaimed in the district, to restrict the authority of collectors and other officers making settlements in such manner, and to such extent, as he may, from time to time, judge expedient. In like manner it shall be competent to Government to vest such collectors as may, from time to time, be judged fit, with a special authority to receive, try, and determine in the first instance, subject to a regular suit in the *adawlut* as above provided, all or any of the questions of the nature specified in the aforesaid sections, though the said collectors may not be engaged in making or revising a settlement of the land revenue; and to vest in such of the collectors as may be thought proper, authority (either generally or within such limits as may be, from time to time, determined) to receive, try, and determine by summary process, all suits for rent which may be preferred by *zemindars*, *talukdars*, or other *sudder malguzars*, or farmers of land, or by any person in their behalf, against any dependent *talukdar*, *zemindar*, under-renter, *raiya*, or other under-tenant of whatever denomination; as well as all applications by *raiya*s and the under-tenants contesting the demand of a *sudder malguzar* or farmer, and all complaints preferred by *raiya*s or other under-tenants of whatever description, against landholders or farmers of land, or their respective agents or representatives, on account of excessive demand or undue exaction of rent, whether levied by distraint or otherwise, as well as all suits relative to the adjustment of accounts between landholders and farmers of land or under-tenants of whatever description, with their sureties, or with any agents or persons employed by them in the management of land, or the collection or payment of the rent of land, and to all other matters immediately connected with the demand, receipt, or payment of the rent of land, whether *malguzares* or *lakheraj*, or with the rent of orchards, pasture grounds, and fisheries, commonly denominated *phulkur*, *bunkur*, and *julkur*, or with any other asset of the land revenue, not included in the *sayar*

abolished, together with all complaints of the non-delivery of *pottahs* when demandable under the regulations, or complaints of the prescribed receipts not being given for actual payment of the rent, and generally complaints of any deviation from the regulations, or from the established usage of the country relative to the matters aforesaid, or any violation of subsisting engagements in disputes respecting the rent and occupancy of land, between landholders or farmers of land, and their under-tenants of whatever denomination.

Secs. 1, Act X of 1859, Reg. IX of 1833, s. 3.

Second. The appointment of the collector to the discharge of the above duties, and the extent of the jurisdiction to be assigned to him, shall be notified by proclamation in the district, after such manner as the Governor-General in Council may direct; and after the publication of such notice, all summary suits, actions, applications, and complaints of the above nature, and referring to lands or the rents, produce, or accessions of land lying within the jurisdiction assigned to the collector as above, which may be preferred in the *zillah* or city *adawlut* by any *sudder malguzar*, *zemindar*, *talukdar*, farmer, *raiyyat*, or other proprietor or under-tenant of land, shall, immediately on being received, be referred for trial to the collector, to whom also all such summary suits depending at the time shall be transferred: provided also that in such cases, parties having suits or complaints to prefer of which the cognizance may be vested as above in the collector, shall be at liberty to prefer them to that officer in the first instance. It shall in like manner be competent to the Governor-General to fix by an order in Council the period at which the special powers given as above to a collector, and the authority to be ordinarily exercised by those officers on the occasion of making settlements, shall cease and determine.

Third. No complaint or application of the nature specified in the preceding clauses, shall be received by a collector under the rules of this Regulation unless the plaint or application shall have been preferred within the period of one year after the cause of action shall have arisen.

21. In summary suits for rents and the like, wherein special rules have been prescribed for regulating the process of the courts, the collectors shall be guided by the same rules, and shall exercise the same powers and authority as are or may be lawfully exercised by the *zillah* and city judges. In other cases falling under their cognizance, according to the provisions of this Regulation, the ordinary process for securing the attendance of the defendant or party otherwise impleaded, shall be to issue a notice reciting the matter, and requiring the defendant or other party to attend in person or by representative, at such time and place as may be made choice of by the collector for conducting the investigation: should any party fail to attend after being served with a notice of the above description, or should the return of the *nazir* or person employed to serve the notice be, that after diligent search the party or parties cannot be found, proclamation shall be made in writing to be stuck up at or near the ordinary residence of the party, stating that after fifteen days from the date of publishing the same, the case will be liable to be brought up for trial and judgment, and any party implicated who, having been served with the notice above described, shall fail to attend, or who shall continue to absent himself, will be as much bound by the judgment that may be passed, as if he or they had been in attendance to plead.

22. [Repealed by Act X of 1859.]

23. *First.* It is hereby declared and enacted, that in so far as concerns the summoning and examination of witnesses, the penalties for false testimony, for resistance of process, contempts, and all other similar matters, connected with

cases under cognizance before the collectors of land revenue, or other officer, by virtue of the powers vested in them by this Regulation, or any other regulation, whereby collectors are vested with judicial powers, their *cutcherree* or office for the time being shall be deemed and held to be a court of civil judicature.

Second. Provided also, that the regular suits which may be brought to contest decisions passed by collectors, under the powers vested in them by sections 11, 12, 14, 15, 16, 17, 18, 19, and 20, shall be of the nature of an appeal to court in its regular jurisdiction from a summary award. It shall not therefore be necessary for the collector or other officer of Government to be a party in the action.

Third. Collectors of the land revenue are hereby empowered to execute all awards made by them under the rules of this Regulation, in cases wherein a specific sum of money shall be adjusted to be due, or any costs or damages be awarded; the collector decreeing the same shall proceed to levy the amount for the party in whose favour it may be adjudged by the process in use for the recovery of arrears of the Government revenue: provided, however, that he shall not sell any lands, houses, or other real property in satisfaction of any judgment passed in favour of any individual, on a summary inquiry. In cases wherein possession of lands, houses, watercourses, or the like may be adjudged, it may and shall be lawful for the collector making award, to deliver over possession in the same manner and with the same powers in regard to all contempts, resistance, and the like, as are or may be lawfully exercised by the courts in giving possession to an auction-purchaser: and the *zillah* or city *adawls* shall support the collectors in the exercise of the above power, and shall give effect to any orders passed by them in pursuance of it, in the like manner as if the same had been passed by themselves. Collectors are further hereby empowered to place one or more *peons*, *mirdahs*, *surars*, or the like, to aid in the maintenance of possession for the party to whom it may be awarded, in case of his deeming such a measure necessary or expedient.

24. *First.* It shall and may be lawful for a collector or other officer exercising the powers of collector, preparatory to making or revising a settlement as aforesaid, to depute any *tehsildar*, *canoongoe*, *ameen*, or other fixed or temporary officer, to any village or *mohaul*, whether the same be managed by a *zemindar* or farmer, or be held *khas*, to inquire into the various matters which such collector or other officer is required or empowered to investigate, in order to form a settlement in the mode prescribed by this Regulation. Any such native officer so deputed as above, shall be deemed to be vested with the power of summoning and examining *putwarees*, *gomastahs*, or other persons by whom the accounts of the village or *mohaul* may be kept, in the same manner and with the same powers as is provided for officers deputed under Section 25, Regulation XII of 1817. Furthermore, in case the collector or other officer may so prescribe, the said *tehsildar*, or other person shall be empowered to make a measurement of the village or *mohaul*, into which they may be deputed, and to summon any *mocuddams*, *putdams*, *raiats*, or other residents, and to call upon them to point out the boundaries of such village or *mohaul*, and to furnish information as to all matters relating to the land and the rights and interest attaching thereto: and any person contumaciously withholding information from an officer deputed as aforesaid, shall be liable, on the same being established to the collector's satisfaction, to the same penalty as is prescribed for *putwarees* refusing to attend or give evidence.

Second. Provided also, that any person who may, by force or threats, obstruct or resist the execution of any legal process, requisition, or order of a collector or other revenue officer shall, in addition to the penalties prescribed by

the existing regulations for such act, be liable to a fine not exceeding two hundred rupees, or to imprisonment in the *dewanny* jail for a period not exceeding two months; the said fine or other penalty to be adjudged by the collector after proceeding duly held and recorded, and the sentence to be immediately reported to the Board to which he may be subject.

Third. Provided further, that all police officers shall aid and support the execution of all process and orders issued by a collector or other officer aforesaid, on the responsibility of the officer issuing or executing the same; and if any affray or breach of the peace shall occur in consequence of any resistance or obstruction being made or attempted to be made to the legal process or order of a collector or other revenue officer, the parties resisting or obstructing such process or order, shall be punishable for the affray or breach of the peace, and the revenue officers shall not be liable to any criminal prosecution on that account.

25. [*Repealed by Act XX of 1865.*]

26. No other pleadings shall be required from the parties in such suits, than a plaint and answer, provided that if the parties should, at any time, wish to file an amended plaint, or an amended answer, or any explanatory motion, such subsidiary pleadings shall be received.

27. [*Repealed by Act XII of 1876.*]

28. It shall be competent to the collectors to hear and determine such suits in whatever part of the district they may occasionally be or reside, provided that every hearing and decision be in public *cutcherree*, or in some other place open to the public, and in the presence of the parties or of their constituted agents or *vakeels*, if in attendance.

29. *First.* The decisions of the collectors on all such suits shall be appealable to the Board of Revenue or other authority exercising the powers of that Board. The petition of appeal shall be presented either to the collector or to the Board, at the option of the party, and shall be written on stamp paper of the value of two rupees, but no petition of appeal shall be received after the expiration of three months from the date of the decision, unless sufficient cause shall be shewn for the delay to the satisfaction of the Board. Provided also that the Board shall not be required in ordinary cases to go into a regular investigation of the merits, but shall be authorized to dismiss the appeal without further investigation, in all cases in which, on a consideration of the final *roobakaree* of the collector, they may not see ground to consider the decision of that officer to be unjust, erroneous, or doubtful, or his proceedings in the case irregular or imperfect; provided also that in all cases in which the collector may dismiss the suit for non-attendance, or on some other ground of default, without an investigation of the merits of the case, it shall be competent to the Board to direct a new trial, and in cases in which he may neglect or delay the investigation or decision of a suit without sufficient cause, it shall be competent to the Board to interfere, and to cause the collector to proceed upon the inquiry into, and determination of it.

Second. No pleadings except the petition of appeal shall be required in such appeals, nor shall any fees be taken by the Board on the exhibits originally filed, or on any further documents which the Board may think it necessary to call for.

Third. If the parties choose to employ in the pleading of such appeals the same agents or *vakeels* who were previously employed by them in the original suit, no further *mooktarnamah* or *vakultnamah* shall be required of them.

Fourth. The respondent shall receive notice of the appeal, but shall not be compelled to appear in person or by *vakeel*, and the appeal shall be decided on the merits of the case, notwithstanding his absence, in the same manner as if he had attended.

Fifth. The decision of the Board shall be final in as far as concerns the result of the summary inquiry of the collector, and shall be rendered in a Persian *roobakaree* written on stamped paper of the value of two rupees.

Sixth. Any person, however, dissatisfied with the summary judgment of the collector or the Board, and desirous of a more full and formal decision, shall be at liberty to prefer a regular suit to try the merits of the case in the *zillah* or other similar or superior court in which it may be cognizable. In such cases the summary judgment of the collector, if not reversed or staid by the Board, shall be carried into effect, notwithstanding the institution of the regular suit.

See 8 B. L. R., 524.

30. All persons having claims or complaints to prefer of the nature of those made cognizable by collectors, under the provisions of this Regulation, and not wishing to avail themselves of the summary process authorized in that court, shall be at liberty to institute their claims or complaints in the first instance by a regular suit before the local *moonsiff*, or in the *zillah* or city *adawlut*, or provincial court of the division, according as the suit may be cognizable in these courts respectively, under the general regulations for the administration of civil justice.

31. *First.* Whenever a regular suit may be instituted in the civil court, with a view to set aside or alter a summary judgment passed by a collector, the proceedings held on the summary inquiry shall be called for by precept from the court, and filed on the record of the case.

Second. Provided also, that no such suit shall be cognizable by, or referrible to any register, *sudler ameen*, or *moonsiff*, and all registers, *sudler ameens*, and *moonsiffs*, shall in cases tried by them be held and bound by the decisions passed, and records prepared, by collectors or other revenue officers under the provisions of this Regulation, unless the same shall have been rescinded, or altered by the Board, or by the *zillah* or other similar or superior court on a regular suit.

See section 2, Act XXV. of 1837.

32. The collectors shall transmit to the Boards such periodical reports of the causes decided by, or depending before them, as the Boards may direct, and the Boards will also furnish to Government such abstracts of those reports, and such reports in the cases received and determined by them in appeal, as the Governor-General in Council shall from time to time require.

33. *First.* It shall be competent to collectors, or other officers exercising the powers of collectors, to refer to arbitration any disputes cognizable by them under the provisions of this Regulation, as well as any questions or disputes of any kind respecting land or the tenures therein, or the rights dependent thereon that may come before them, provided the parties consent to that mode of adjustment, and on award being made, to cause the same to be executed. In referring cases to arbitration under the above provision, and in their general proceedings relative to such suits, the collector shall be guided by the rules contained in Regulation XVI of 1793, and the other corresponding enactments, and in Regulation VI of 1813, in so far as the same may be applicable, and shall be competent to vest in the arbitrators the same powers and authority in regard to the summoning and examination of witnesses, and the administration of oaths, and to enforce the orders passed by the arbitrators under such powers, in the same manner as the courts of judicature are empowered to do; and all awards made on such references shall, when confirmed by the collector, have the same force and validity as a regular decree of the *adawlut*, and shall not be liable to be reversed or altered, unless the award shall be open to impeachment on the

ground of corruption or gross partiality, or shall extend beyond the authority given by the submission of the parties, and such ground of impeachment shall be established in a regular suit in the *zillah*, city, or other superior court, wherein the case may be cognizable.

Second. In referring any dispute to arbitration, the collector shall be careful to specify in his proceedings, and in the deed of arbitration, to be executed by the parties, the precise matter submitted to the arbitrators; and if the award first made by the arbitrators shall not include all the points submitted to them, or shall be otherwise incomplete, it shall be competent to the collector again to refer the matter to them, with directions to perfect their award.

Third. The *pergunnah canoongoes* and *tehsildars* may be appointed arbitrators in any case referred to arbitration under the above rules; any thing in the existing regulations notwithstanding.

See Ss. 5-10 of Reg. IX of 1833.

34. *First.* When a collector, or other officer exercising any of the powers vested in collectors by the rules of this regulation, relative to complaints of dispossession or disturbance of the possession of lands or premises, shall learn either by a reference from the magistrate, or by a report from any other public officer or otherwise, that any disputes exist within the tract placed under his jurisdiction relative to any lands, premises, crops, orchards, pasture grounds, fisheries, wells, watercourses, tanks, reservoirs, or the like, likely to terminate in a breach of the peace, it shall and may be lawful for the collector or other officer aforesaid, to require the contending parties to attend in person or by representative at a stated time and place, and after investigating the case in the presence of the parties or their representatives, or such of them as may attend, or referring it to arbitration as above prescribed, to decide the case in the same manner as if it had been brought before him by the complaint of one of the parties: provided also, that if the fact of previous lawful possession cannot be ascertained, it shall be competent to the collector, subject to the orders and direction of the Board, to decide on the question of right, and to give possession to one of the contending parties, leaving the other party to contest the decision by a regular suit in court. But no such decision shall be passed by any collector, until he shall have instituted a careful inquiry into the fact of possession, and the Board shall be careful to see that this restriction is observed: provided further, that in such cases it shall be competent to the collector to attach the disputed lands, premises, &c. as aforesaid, and to appoint an officer to the management of the same, retaining in deposit the rents and produce, or such portion thereof, as may remain after discharging any public revenue demandable therefrom, with the charges of management, until one of the contending parties shall be placed in possession.

Second. Whenever any magistrates or joint magistrates shall have before them any suit, complaint, or information relative to any dispute regarding lands, premises, crops, watercourses, or the like, which may appear likely to terminate in a breach of the peace, or which it may otherwise be desirable to bring to an immediate decision, it shall be the duty of such magistrate or joint magistrate, in cases in which the collector shall be vested with the recognizance of such actions, to certify the case to that officer, and the collector will then forthwith proceed to investigate and determine the case under the rules above prescribed: provided also, that in all cases of forcible dispossession, or forcible disturbance of possession, the collector shall invariably transmit to the magistrate or joint magistrate, a copy of the first proceeding held by him in the case, and also a copy of the *roobataree* containing his final award.

Third. The collector shall in all such cases use every proper means for inducing the parties to refer their disputes to arbitration, in like manner as the *dewanny* courts are directed to do.

35. Whenever the term "Board of Revenue" or "Board of Commissioners" may occur in this or any other Regulation, the same shall be held and considered to apply to any Board, committee, or commission, and to any member of such Board, committee, or commission that may be vested by the Governor-General in Council, with the powers and authority of the Board of Revenue, ~~says~~ and except in so far as may be otherwise specially declared and provided. In like manner all rules in this or any other Regulation, whereby any duties or powers may be prescribed for, or vested in collectors, shall be held and considered to be equally applicable to any officer exercising the authority of collector, under the orders or with the sanction of the Governor-General in Council.

A. D. 1825. REGULATION IX.

A Regulation for extending the operation of Regulation VII of 1822; for authorizing the revenue authorities to let in farm estates under temporary leases, on the default of the malguzars, or to hold the same khas for a term of years; for modifying and adding to the rules contained in Regulation II of 1819, and for making certain other amendments in the existing Regulations. (See Act XV of 1874.)

Whereas the provisions of Regulation VII of 1822, are in force only within the Ceded and Conquered provinces, in the district of Cuttack, and in the *pergunnah* of Puttaspore and its dependencies: and whereas there are within the other provinces belonging to this presidency various *mohauls* and tracts for which a permanent settlement has not yet been concluded, and it appears to be advisable that the revenue authorities should be vested, in regard to such *mohauls* and tracts, with the same powers as belong to the like officers within the ceded and conquered provinces: and whereas the principle of the rules contained in the said regulation, relative to lands held free of assessment or at a *moocurrer jumma* under special grants, is equally applicable to such tenures in all parts of the country: and it appears to be likewise expedient to make provision for the occasional exercises by the revenue officers in the lower provinces, of the powers specified in the said regulation, for the summary trial of certain suits between individuals, subject as therein provided to an appeal to the *adawlut* by a regular suit: and whereas a frequent recourse to the sale of lands, for the recovery of arrears of revenue in districts of which the assessment has not been fixed in perpetuity, being inexpedient, it appears to be necessary and proper that the revenue authorities should be empowered to let in farm for a term of years the estates of defaulters under temporary leases, or to hold the same *khas* for the purpose of making a *raiyathwar* settlement, where that measure may be deemed advisable: and whereas it has appeared to be expedient to modify and to add to the provisions contained in Regulation II of 1819: and whereas the rules prohibiting the collection of *sayer* duties, and the provision contained in Section 39, Regulation IX* of 1810, having been considered applicable to several items of *sewage* collections or cesses levied by the *malguzars* and others for local purposes, and according to ancient usage, which it would be injurious to abolish, it appears to be expedient to provide for the continuance of such collections:

* Repealed by Act VI of 1863.

when sanctioned by Government: the following rules have been enacted, to be in force from the date of their promulgation, within the provinces belonging to the presidency of Fort William.

2. *First.* The provisions contained in clause sixth, Section 2, and in the thirty-three following sections of Regulation VII of 1822, are hereby extended to all lands (including *jaghires*, *mocurrerees*, and other tenures held free of assessment or at a quit rent under special grant) not included within the limits of estates for which a permanent settlement has been concluded in the manner prescribed by Regulation VIII of 1793, and Regulations II* of and XXII† of 1795, as far as the same may be applicable.

Second. The said provisions shall likewise be in force in all estates, which may now or hereafter be held *khas*, during the period for which they may be so managed.

Third. The provisions aforesaid shall also apply to the Sunderbunds, the hill-lands of Bhaugulpore, and other extensive forests and wastes, not included within the limits of *pergunnahs*, *mouzahs*, or other revenue divisions, specified at the time of settlement as belonging to the *mohauls* then assessed; as well as to all estates bordering on such forests or wastes.

3. It shall be competent to the Governor-General in Council to vest any collector, or other officer exercising the powers of collector, within the provinces of Bengal, Behar, Orissa, and Benares, with the several powers specified in Section 20, Regulation VII of 1822, in the manner specified in the second clause of that section, within such local limits as may from time to time appear to be advisable: and the several provisions contained in Section 21, and the fourteen following sections, shall apply to the several *pergunnahs* or other local divisions so placed under the jurisdiction of the collector, or other officer aforesaid.

4. Whenever an arrear of revenue shall accrue on account of any *mohaul*, for which an engagement may have been taken from the proprietors or persons recorded as proprietors, not being an estate of which the assessment has been fixed in perpetuity, and the *malguzars* shall fail to discharge the same within one month of the date on which it became due, then if there shall appear to be any objection to the sale of the estate, and the arrears cannot otherwise be recovered, (on which points the decision of the revenue authorities is to be held conclusive,) it shall be competent to the collector, or other officer exercising the powers of collector, with the sanction of the Board, and subject to the orders of Government, to annul the existing engagements with the *malguzars*, and to let the *mohaul* in farm for such period, not exceeding fifteen years, as the Governor-General in Council may appoint, or to hold the *mohaul* under *khas* management for a like period. In such cases, if the *mohaul* shall yield a higher *jumma* than that for which the *malguzars* may have engaged, the excess shall in the first place be appropriated to the liquidation of the arrear due on account of it, or such portion thereof as the farmer may not have separately agreed to discharge or as may not otherwise have been recovered, and, out of any surplus remaining, the *malguzars* shall receive such *malikanah*, not being less than 5 per cent. nor more than 10 per cent. on the assessment of the last year of their engagement, as the Governor-General in Council may direct.

5†. *First.* The following rules are enacted in modification of Sections 5, 6, 8, 10, 11, 13, 15, 22, and 30 of Regulation II of 1819.

Second. Whenever a collector, or other officer exercising the powers of col-

* Repealed by Act XIX of 1873.

† Repealed by Act VII of 1868.

‡ See Reg. III of 1828, a. 2.

lector, shall visit or be about to visit any *mohaul*, for the purpose of making a settlement in the manner prescribed in Regulation VII of 1822, it shall be competent to him, by a notification to be stuck up in some conspicuous place within such *mohaul* and each village thereof, if consisting of several villages, to require all persons holding lands free of assessment, or at a fixed *jumma* within or adjoining to the village or villages in which the lands of such *mohaul* or any part thereof may be situated, to appear before him either in person or by *vakeel* within a reasonable time, not being less than one month from the date of such notification, at such place within the *mohaul* as he may select for holding his office, and to attend him from day to day while he may continue within the *mohaul*, with all *sunnuds* or other writings in virtue of which they may possess the lands, or under which the lands may have been or may be claimed, to be held free of assessment or at a fixed *jumma*, together with any evidence they may desire to have taken in support of their claims.

Third. It shall likewise be competent to collectors and other officers aforesaid, when engaged in the settlement of any *mohaul* under the rules of the regulation above-mentioned, or preparatory thereto, to measure or cause to be measured, without a previous reference to the Board of Revenue, all lands, whether *malguzaree* or *lakheraj*, belonging or adjoining to the village or villages in which such *mohaul* or any part thereof may be situated.

Fourth. When the collector or other officer aforesaid shall have commenced the settlement of any *mohaul*, in regard to which he may have issued a notification as aforesaid, and shall propose to hear the claims of persons holding lands free of assessment or at a fixed *jumma*, and to receive their *sunnuds* and other writings as aforesaid or any of them, the period fixed in the notification for the attendance of such parties being arrived, he shall on the day preceding that on which he may intend to hold proceedings in the said cases or any of them, notify such intention by an *ishtakar* stuck up in his office, and in some place, open to the public, within the *mohaul*.

Fifth. If any person holding land free of assessment or at a fixed *jumma* as aforesaid, shall fail to attend either in person or by *vakeel* after notice being given in the manner above prescribed, the collector shall be competent to proceed *ex parte* to investigate the title of such party to hold the land in his possession free of assessment; and with the sanction of the Board of Revenue to resume the said lands, if they appear to be held on an invalid title. Nor shall any person defaulting as above, or neglecting to appear and give answer when required to do so in the manner prescribed in Regulation II of 1819, be entitled to stay the resumption and assessment of his lands, under the rules contained in the 22d section of that regulation. Provided further, that the rule contained in clause second, Section 13, Regulation II of 1819, shall be held applicable to such persons, as well as to persons who may appear when summoned under the provisions of that regulation, or in the manner hereinbefore provided.

Sixth. It shall be competent to collectors and other officers making settlements as aforesaid, either to complete the investigation of the claims of persons holding land free of assessment or at a fixed *jumma*, under the rules of the fifteenth and following sections of Regulation II of 1819, with the modification hereinafter provided, during the progress of the settlement; or to limit their proceedings to the ascertainment of the land actually held under such tenures, and the record of the title-deeds produced by the parties; postponing the further investigation of the case to a future period. When any collector or other officer may postpone the investigation of any case as aforesaid, he shall at the same time notify to the party the time and place at which the further investigation is to be held, or if circumstances prevent him from doing so, he shall before resuming the

inquiry give the party one month's notice to attend: and on the failure of any party to attend when so warned, the collector or other officer aforesaid shall be competent to proceed to try the case *ex parte*, and with the sanction of the Board, to resume and assess the lands.

Seventh. Collectors or other officers who may proceed to investigate claims to *lakheraj* lands during the progress of a settlement, shall follow the rules of the fifteenth and following sections of Regulation II of 1819, in all cases wherein the parties may attend and deny the liability of their lands to assessment, subject to the modifications hereinafter provided.

Eighth. No lands shall be resumed by a collector, even though the parties may confess that they are liable to assessment, without the sanction of the Board of Revenue, save and except as hereinafter provided: but on such confession duly attested, which will of course supersede the necessity of any further inquiry, it shall be competent to the Board forthwith to direct the lands to be assessed, unless the same be held by village or *zemin-daree* servants in lieu of wages, which shall not be resumed without the sanction of Government. Provided also, in all cases wherein it may appear to the Board, that the resumption of lands held free of assessment would occasion serious distress to the holders, it shall be their duty to submit a report of the circumstances to the Governor-General in Council.

*Ninth.** The provisions of clause first, Section 23, Section 25, and Section 28, Regulation VII of 1822, shall be applicable to cases investigated by collectors, under the rules of Regulation II of 1819, or under the provisions of this Regulation.

Tenth. It shall not be necessary to use stamp paper, for the proceedings held, or exhibits filed before the revenue authorities in cases originating with a collector, or other officer of Government, claiming to assess land held free of assessment. But the said authorities are authorized in the said case, as in all other cases wherein they may exercise judicial powers under the provisions of the existing regulations, to award to witnesses their reasonable charges, and to levy the same, as well as all costs adjudged by them, by the process in force for the recovery of arrears of Government revenue.

Eleventh. Persons claiming to hold lands exempt from revenue shall, with their petitions of plaint, deliver to the collector or other officer to whom the same may be preferred, all *sunnuds* and other writings on which their claim may be founded; and shall insert in the said petition a full specification of the several particulars required to be registered by the rules in force, relative to the registry of rentfree tenures, and of the grounds on which their claim is founded. If the claim shall involve only the interests of Government, the collector shall proceed without delay to investigate the case, giving, however, eight days' previous notice to the party of the day on which he may propose to bring it to a hearing in the mode prescribed for the civil courts. If the claim shall be against any individual singly or jointly with Government, the collector shall serve him with a notice containing a statement of the demand, and requiring his attendance in person or by *vakeel* duly authorized, within the period of one month, with any papers or evidence he may desire to produce in denial of the claim; and on the appearance of such defendant, the collector, after allowing him to inspect and examine the claimant's petition of plaint and the writings therein referred to, shall call upon him to deliver within the period of seven days a statement of the objections he may desire to urge against the claim. In such cases no other pleadings shall be required from the parties than a plaint and answer, but it shall

* See Act XX of 1865.

and may be lawful for collectors to receive and record such subsidiary pleadings as may appear requisite for the elucidation of the merits of the claim. Collectors shall proceed to investigate every such case as soon as possible after the answer of the defendant shall be received; giving, however, as aforesaid, eight days previous notice to the parties, of the day on which he may propose to bring it to a hearing. Provided, that in cases wherein the parties concerned, or their authorized representatives, shall desire on consent (the same being signified in a written petition or *ikramnamah* to be filed with the proceedings) to have an immediate decision, whether the case shall originate in a claim on behalf of Government or in the suit of an individual, and whether the proceedings of the collector shall be held under the provisions of Regulation II of 1819, or under those of this or any other regulation touching the matter, it shall be competent to the collector to proceed forthwith to the investigation and decision of the case without issuing any formal summons or notice.

Twelfth. Whenever a collector or other officer exercising the powers of collector, shall be of opinion, that any tract of land belongs to Government, and that no individual has *bond fide* possession thereof, it shall be competent to him, by a notification, to be stuck up in his *cutcherree*, in the *zillah* court, and in the *cutcherree* of the *canoongoe*, *moonsiff*, or *thanadar*, to whose jurisdiction the land in question may belong or adjoin, to require all claimants to the same to appear before him within a reasonable time to be fixed by the Board of Revenue, not being less than six weeks from the date of such notification; and on the appearance of such claimants, to proceed to investigate their claims in the manner prescribed by Regulation II of 1819, for investigations relative to the liability of lands to be assessed as herein modified. Provided further, that if the collector or other officer aforesaid shall decide that none of the claimants have *bond fide* possession of the lands in question, and his decision shall be affirmed by the Board of Revenue, the said lands shall be at the disposal of Government, until the same shall be adjudged to be private property by a decree of court on a regular suit. Provided also, that all such suits, if preferred by one of the claimants before the collector, shall be dismissed with costs unless instituted within six weeks of the date on which the Board may affirm the decision of that officer, and that the rule contained in clause second, Section 13, Regulation II of 1819, shall be strictly applied to such suits: nor shall any suit be admitted on the part of any person who may not have appeared before the collector pursuant to notice, unless he shall be able to show good and sufficient cause for his non-appearance, and shall apply for permission to sue within six weeks of his being informed of the Board's decision. Provided further, that if the party shall not prosecute his suit within six weeks of being permitted to sue, the suit shall be dismissed with costs.

6. It shall be competent to the Governor-General in Council, by an order in council, to vest any collector or other officer who may be deputed to hold a local inquiry within the limits of any *mohaul*, with the same powers and authority in regard to all lands held free of assessment within or adjoining to the village or villages, in which the lands of such *mohaul* or any part thereof may be situated, and for the investigation of all claims touching such lands as by the foregoing provisions are vested in collectors making settlements in the manner prescribed by Regulation VII of 1822: and also from time to time to depute collectors or other officers aforesaid for the purpose of ascertaining, recording, or investigating the said claims in the manner above prescribed.

7. The particulars of all lands held free of assessment within all villages and *mohauls* of which the settlement may be made under the provisions of Regulation VII of 1822, shall be fully recorded in the proceedings of the collector or other officer making the settlement.

8. Nothing contained in Regulation II of 1819, or in any other Regulation in force, shall affect or be considered to affect the provisions contained in Section 10, Regulation XIX of 1793, Section 11, Regulation XXXI* of 1803, and in the corresponding enactments applicable to Benares, and the conquered provinces, relative to grants illogally made subsequently to the dates specified in the said rules respectively: and in all cases, in which it shall be established, to the satisfaction of the revenue authorities, that any lands now held free of assessment, were subject to the payment of revenue at the dates aforesaid or subsequently thereto, and that they have not been thereafter exempted from the payment of revenue under the authority of the Governor-General in Council, nor adjudged to be exempted from payment of revenue under a regular decree of court; it shall and may be lawful for the said authorities forthwith to resume and assess the said lands; save and except in cases wherein the revenue of the same may belong to a *zemindar*, *tahildar*, or other *malguzar*, with whom a permanent settlement has been concluded: nor shall the provisions of Section 22, Regulation II of 1819, apply to such cases.

9. It is hereby declared and enacted, that the rules relative to the abolition of *sayer* duties, and the provision contained in Section 39, Regulation IX† of 1810, are not and shall not be held to be applicable to any item of *sewasse* collection levied by *malguzars* and others according to ancient custom, which has been or will be sanctioned by a collector or other superior revenue authority, not being a tax on the transport, export, or import of goods or merchandise, or other tax or duty specifically prohibited: but after the settlement of any village or *mohaul* shall have been made in the manner specified in Section 9, Regulation VII of 1822, the rules adverted to shall be applicable to all cesses and collections not sanctioned in the manner specified in section 9, Reg. VII, 1822.

A. D. 1828. REGULATION IV.

A Regulation to declare and extend the powers to be exercised by Collectors, when making or revising settlements, under the provisions of Regulation VII of 1822—passed by the Governor-General in Council, on the 7th August 1828; corresponding with the 24th Sawun 1235 Bengul era; the 12th Sawun 1235 Fussilly, the 25th Sawun 1235 Willaity; the 12th Sawun 1885 Sunbut; and the 25th Mohurram 1244 Higeree.

Whereas it appears to be expedient that the powers specified in Section 16, Regulation VII of 1822, should be generally vested in collectors and other officers performing the duties of collectors, when employed in making or revising settlements according to the provisions of that law, and that the jurisdiction of the said officers in such cases should not be barred by summary decisions passed by magistrates or joint magistrates, under the rules of Regulation XV of 1824; the following rules have been enacted, to be in force, from the date of their promulgation, throughout the provinces subject to the presidency of Fort William.

2. *First.* It shall be competent to all collectors and other officers engaged in making or revising the settlement of any *mohaul*, to hear, try, and determine all claims to the property and possession of the lands lying, or alleged to lie within the same, or the rent or produce or any appurtenance thereof, and to give

* Repealed by Act XIX of 1878.

† Repealed by Act VI of 1863.

possession to the party who may appear to have the best title, subject to the orders and directions of the Board to which they are respectively subordinate, and further subject to the revision of the *zillah* or provincial court on a regular suit. And no decision passed by a collector under this section, shall be disturbed by any court of judicature, otherwise than after a full and regular investigation of the merits.

Second. In modification of the rule contained in Section 3, Regulation XV of 1824, it is hereby declared and enacted, that summary decisions passed by magistrates and joint-magistrates, under the authority given to them, may be revised, altered, or reversed by collectors, or other officers exercising the powers vested in them by this Regulation, intimation of such revision, alteration, or reversal being invariably given to the magistrate or joint magistrate of the division in which the original decision was passed, and the parties in whose favour judgment may be passed by the collectors or other officers above-mentioned, shall be maintained in possession, until the decision shall be altered or reversed by a superior Board or by a competent civil court, on the institution and determination of a regular suit.

Third. If in any case, in which a collector or other officer vested with the powers of collector may have held proceedings under Regulation VII of 1822, previously to the enactment of this Regulation, it shall appear to the Board of Revenue or to Government, that justice has been denied to any one because of his not having exercised the authority, which such officers are, by this Regulation, empowered and required to exercise, or in consequence of his jurisdiction having been disallowed, it shall be competent to the Board and to the Governor-General in Council, to direct the said officer, or any other officer exercising similar functions, to hold supplementary proceedings, for the trial and determination of the claims of the party so appearing to be aggrieved, with the same powers as if he had originally proceeded under the present regulation.

Fourth. To prevent doubts as to the period, for which collectors and other officers aforesaid are to possess the powers vested in them by this Regulation, and by Regulation VII of 1822, in regard to any *mohauls* of which the settlement may have been or may be about to be made or revised, it is hereby declared and enacted, that they shall be held and considered to be engaged in making and revising such settlement from the date on which they may have issued or may issue orders for adjusting the boundaries, for measuring any of the lands, or for making a census of the inhabitants of any village or portion of a village belonging to such *mohaul*, of which intimation shall be given to the magistrate or joint magistrate within whose division the village shall be situated, up to the day on which they may be informed that the settlement, as made and revised by them, has been finally confirmed by Government. During the aforesaid period, the powers vested in magistrates and joint magistrates by Regulation XV of 1824, shall be suspended in regard to all *mohauls*, of which the settlement may be so in progress : and the said officers shall be guided, in respect to such *mohauls*, by the provisions of clause second, Section 34, Regulation VII of 1822, by which they were required to refer to the revenue authorities disputes regarding lands, premises, crops, watercourses, and the like. And all police officers are required to give immediate and efficient support to collectors and other revenue officers in the execution of their duties.

A. D. 1833. REGULATION IX.

A Regulation to modify certain portions of Regulation VII. of 1822, and Regulation IV. of 1828; to provide for the more speedy and satisfactory decision of judicial questions cognizable by officers of revenue employed in making settlements under the above Regulations; for enforcing the production of the village accounts; for the more extensive employment of native agency in the Revenue department; and to declare the intent of section 5, Regulation VII. of 1822, touching claims to malikana.

Experience having demonstrated the expediency of modifying certain enactments of Regulation VII. of 1822, and Regulation IV. of 1828; also of providing a more speedy and satisfactory mode of deciding such judicial questions as may be cognizable by officers of the revenue department under those Regulations; and of declaring the intent of the rules regarding *malikana* promulgated by Section 5, Regulation VII. of 1822—It having been found expedient likewise that measures should be adopted for enforcing the production of the village accounts, and for rendering them accessible to all persons concerned having occasion to examine them—Also, that Natives of respectability should be employed in more important trusts connected with the revenue administration. The following provisions have been enacted, to be in force from the date of their promulgation:—

2. So much of Regulation VII. of 1822 as prescribes, or has been understood to prescribe, that the amount of *jumma* to be demanded from any *mehal* shall be calculated on an ascertainment of the quantity and value of actual produce, or on a comparison between the costs of production and value of produce, is hereby rescinded.

3. So much of the above Regulation as prescribes, or has been understood to prescribe, that the judicial investigation into, and decision on, questions of disputed private claims, shall be conducted simultaneously with the ascertainment of, and determination on the amount of the Government demand, is hereby rescinded. The Governor-General in Council will hereafter determine the order in which the above matters shall be respectively disposed of.

4. [Repealed by Act XVI of 1874.]

5. In addition to section 33, Regulation VII. of 1822, it is hereby enacted, that whenever any judicial question may be depending before a Collector, or other officer employed in making settlements under the provisions of Regulation VII. of 1822, in which the interests of justice may, in the opinion of such officer, require that the case be decided by arbitration, it shall be lawful for him to fix, under the instructions with which he may be furnished by the superior revenue authorities, a period within which the parties must produce the award.

6. In that case, if the parties shall refuse or neglect to produce such award within the term limited, it shall be lawful for the Collector, or other officer, to summon a *punchayat*, to be composed of three or five impartial and otherwise competent persons, of good repute, for the trial of the matter at issue.

7. After duly considering the statements and evidence offered by the parties, or in case of the default or recusance of either, the statements and evidence produced by the party in attendance, the *punchayat* shall declare their opinions, and judgment shall be recorded according to the sentence of the majority. The superior revenue authorities will, from time to time, issue such rules of practice for the guidance of the officers employed on this duty, or the *punchayats*, as they may consider necessary.

8. No appeal shall be allowed from such decisions, which shall be immediately executed and maintained, unless the Commissioner, subject to the control

of the Sudder Board of Revenue, should think proper, for any special reason, to direct that the case shall be submitted to another *punchayat* for decision.

9 Any suit brought before any Court of Justice to set aside a decision made in conformity with the above rules shall be nonsuited with costs.

10. In like manner any suit brought before any Court of Justice against the arbitrators, collectively or individually, appointed in conformity with the rules prescribed, to recover from them the value of the property lost by the decision founded on their award, shall be nonsuited with costs.

11. It is hereby declared that the rules concerning *malikana*, contained in Section 5, Regulation VII. of 1822, were intended to have prospective effect only, and to be applicable solely to settlements made under the Regulation, and to recusances tendered at the completion of such settlements.

12. It is further enacted, that the village accounts, which are required to be kept in such manner and form as has heretofore been the custom, or in such other mode as may hereafter be prescribed by the Boards of Revenue, shall be prepared in duplicate sets: one for deposit in the office of *putwarree*, and one for deposit in the office of Collector of the district in which the respective estates or tenures may be situated, and wherever the office of a *cimoongoe* may be established, a third copy shall be prepared and deposited in that office.

13. The several accounts required for deposit in the *pergunnah* and *zillah* revenue offices, as above stated, instead of being delivered at the expiration of every six months, as prescribed by the rules at present in force, shall be furnished in such mode and at such periods as the Boards may direct. They shall be open to the inspection of every person concerned, desirous of examining them.

14, 15. [Repealed by Act X of 1859.]

16. It shall be competent to the Governor-General in Council to appoint to any revenue jurisdiction a deputy Collector, with the powers hereinafter specified.

17. The office of deputy Collector shall be open to natives of India of any class or religious persuasion. The persons selected shall be appointed by the Governor-General in Council, and shall receive their commissions from Government in the usual mode, under the signature of the Secretary in the Revenue Department.

18. The deputy Collectors will receive a monthly allowance to be fixed by the Governor-General in Council, and to be susceptible of increase, from time to time, as their conduct may appear to entitle them respectively to such consideration.

19. [Repealed by Act X of 1873.]

20. The deputy Collectors appointed under this Regulation are to be in all respects subordinate to the Collector under whom they may be placed, and are required to perform all duties assigned to them by that functionary.

21. It will be at the discretion of the latter officer to employ them in settlement duties under the provisions of Regulation VIII of 1822, in the superintendence of the Government *khass mehals*, and generally in the transaction of any other part of the duties of a Collector.

22. All proceedings held by a deputy Collector appointed under this Regulation, shall be recorded in his own name and on his own responsibility, subject to the revision and control of the Collector, and appealable to the superior authorities in the usual course.

23. Provided always that the Collector is competent to resume the duties which he may have committed to the deputy, assigning his reasons for so doing for the information of the Commissioner.

24. Provided also, that the Revenue Commissioners, whenever they think proper, may interfere with any arrangements made, by the Collectors for the

employment of the deputies, or the distribution of business to be assigned to those functionaries, subject to the general control vested in the Sudder Board of Revenue or the Government, as the case may be.

25. A deputy, appointed under this Regulation, shall not be removed but for misconduct, and with the sanction of the Governor-General in Council. Whenever there may be reason to believe that a deputy is disqualified by neglect, incapacity, or corruption, for continuance in office, a report shall be submitted by the local authorities, through the channel of the Sudder Board of Revenue, for the consideration of the Governor-General in Council, who shall be competent to suspend him, and order a further inquiry into the conduct of such deputy, or to direct his immediate dismissal, as may appear just and proper.

PART V.

THE LAKHERAJ AND SERVICE TENURES.

REGULATION XIX OF 1793, REGULATION XXXVII OF
1793; REGULATION XXIX OF 1814;
REGULATION II OF 1819.

N. B.—See section 181 of the Bengal Tenancy Act.

A. D. 1793. REGULATION XIX.

A Regulation for re-enacting, with modifications, the rules passed by the Governor-General in Council on the 1st December 1790, for trying the validity of the titles of persons holding, or claiming a right to hold, lands exempted from the payment of revenue to Government, under grants not being of the description of those termed *Badshahee* or *Royal*; and for determining the amount of the annual assessment to be imposed on lands so held, which may be adjudged, or become liable to the payment of public revenue.*

By the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every *beegha* of land, (demandable in money or kind according to local custom,) unless it transfers its right thereto for a term, or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, whilst he continues to discharge the latter. As a necessary consequence of this law, if a *zemindar* made a grant of any part of his lands to be held exempt from the payment of revenue, it was considered void, from being an alienation of the dues of Government without its sanction. Had the validity of such grants been admitted, it is obvious that the revenue of Government would have been liable to gradual diminution. Previous, however, to the Company's accession to the *dewanny*, numerous grants of this description were made, not only by the *zemindars*, but by the officers of Government appointed to the temporary superintendence of the collection of the revenue, under the pretext that the produce of the lands was to be applied to religious or charitable uses. Of these grants, some were applied to the purposes for which they were professed to have been made, but in general, they were given for the personal advantage of the grantees, or with a view to the clandestine appropriation of the produce to the use of the grantor, or sold to supply his private exigencies. In conformity to the principles which prevailed under the native administration, the British Government have at various times declared all grants for holding land exempt from the payment of revenue, made since the date of the Company's accession to the *dewanny* without their sanction, illegal and void. Their lenity, however, induced them to adopt it as a principle, that grants of this description made previous to the date of the *dewanny*, and provided the grantees had obtained possession,* should be held valid to the extent of the intentions of the grantor, as ascertainable from the terms of the writings by which the grants might have been made, or from their nature and denomination. But no complete register of these exempted lands having been formed upon the Company's accession to the *dewanny*, nor subsequent to that period, many *zemindars*, as well as the temporary farmers of the public revenue, and the officers of Government to whom the collection of the revenue in the different districts has been occasionally committed in consequence of the *zemindars* refusing to pay the revenue demanded of them, have availed themselves of the above-mentioned rule of limitation, to make grants of extensive tracts of land to others, or in the names of their relations or dependants for their own use, dating the deeds for these alienations previous to the Company's accession to the *dewanny*, or procuring them to be registered in the *zemindars* records, as having been alienated prior to that period. Others have made such alienations without antedating the grants, and left it to the grantee to maintain himself in possession by such means as circumstances might afford, in the event

* Declared to apply to the whole of the Lower Provinces except the Scheduled Districts, Act XV of 1874.

of his title being brought into question. The Governor-General in Council deeming it incumbent on him to recover the public dues thus alienated in opposition to the ancient and existing laws of the country, as well as to resume the revenue of all lands the grants for which might expire; and as the proprietors of estates were not entitled to collect such of the public dues, from the lands included in their estates, as Government had judged it advisable to transfer to individuals, or to resume those which had been alienated by themselves or others, the amount in both cases being excluded from the assets on which the settlement was to be concluded; it was made a rule at the time of forming the decennial settlement, and which has been re-enacted by Section 36, Regulation VIII. of 1793, that the *jumma* assessed upon the estates of individuals was to be considered as "exclusive and independent of all existing *lakheraj* lands, whether exempted from the *kheraj* or public revenue, with or without due authority;" and by the third clause of the seventh article of the proclamation contained in Regulation I. of 1793, which specifies the conditions under which Government declared the decennial settlement permanent, it is expressly stipulated, "that the Governor-General in Council will impose such assessment as he may deem equitable on all lands at present alienated, and paying no public revenue, which have been or may be proved to be held under illegal or invalid titles." The Governor-General in Council, however, at the same time that he is desirous of recovering the public dues from lands which have been illegally alienated, is equally solicitous that persons holding such grants under titles that are declared valid, should be secured in the possession and enjoyment of their property. It is likewise his wish, that the recovery of the dues of Government from those lands which have been illegally alienated previous to the 1st December 1790, should be attended with as little distress as possible to the possessors; and to obviate all injustice, or extortion, in the enquiry into the titles of persons holding exempted lands, he has further resolved, that the claims of the public on their lands (provided they register the grants as required in this regulation) shall be tried in the courts of judicature, that no such exempted lands may be subjected to the payment of revenue, until the titles of the proprietor shall have been adjudged invalid by a final judicial decree. Upon the above grounds, and with a view to facilitate the recovery of the public dues from lands held exempted under invalid grants, as well as to prevent any similar alienations being hereafter made, to the prejudice of the security of the public revenue which has been assessed in perpetuity upon the estates of individuals; and further, that Government and the officers employed in the collection of the public revenue, may at all times have in their possession a correct register of the lands in the several *villahs*, exempt from the payment of revenue, the following rules, containing the rules held passed on the 1st December 1790, with modifications, have been enacted.

See G. B. L. R., 566.

II. *First.* All grants for holding land exempt from the payment of revenue, made previous to the 12th August 1765, the date of the company's accession to the *dewanny*, by whatever authority, and whether by a writing, or without a writing, shall be deemed valid, provided the grantee, actually and *bona fide* obtained possession of the land so granted previous to the date above-mentioned, and the land shall not have been subsequently rendered subject to the payment of revenue, by the officers, or the orders of Government. If it shall be proved to the satisfaction of the court, that the grantee did not obtain possession of the land so granted previous to the 12th August 1765, or that he did obtain possession of it prior to that date, but that it has been since subjected to the payment of revenue by the officers or the orders of Government, the grant shall not be deemed valid.

Second. In the event, however, of a claim being preferred by any person to hold land exempt from the payment of revenue, under a grant made previous to the date of the Company's accession to the *dewanny*, and of it being proved to the satisfaction of the court in which the suit may be instituted in the first instance, or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previous to that date, but that it was subjected to the payment of revenue posterior thereto, by an officer of Government, and the court shall entertain doubts as to the competency of such officer, under the powers vested in him, to subject the lands to the payment of revenue, the court shall suspend its judgment, and report the circumstances to the Governor-General in Council, to whom a power is reserved of determining whether such officer was or was not competent to subject the land to the payment of revenue, and upon receiving the determination of the Governor-General in Council, the court is to decide accordingly. No such claim, however, to hold exempt from the payment of revenue, land that may have been subjected to the payment of revenue for the twelve years preceding the date on which the claim may be instituted, shall be heard by any *zillah* or city court, unless the claimant can show good and sufficient cause for not having preferred the claim to a competent jurisdiction within the twelve years, and proceeded in it as required by Section 14, Regulation III of 1793.

Third. But no part of the two preceding clauses is to be construed to empower the courts to adjudge any person not being the original grantee, entitled to hold exempt from the pay of revenue, land now subject to the payment of revenue, under a grant made previous to the Company's accession to the *dewanny*, the writing for which may expressly specify it to have been given for the life of the grantee only, or, supposing no such specification to have been made in the writing, or the writing not to be forthcoming, or no writing to have been executed, where the grant, from the nature and denomination of it, shall be proved to be a life tenure only, according to the ancient usages of the country.

Fourth. Nor to entitle the heirs of any person now holding land exempt from the payment of public revenue under a grant made previous to the *dewanny*, to succeed to and hold such land exempt from the payment of revenue upon the demise of the present possessor, where the writing for such grant may expressly specify it to have been given for the life of the grantee only, or, supposing no such specification to have been made in the writing, or the writing not to be forthcoming, or no writing to have been executed, where from the nature and denomination of the grant, it shall be proved to be a life tenure only, according to the ancient usages of the country. Nor to entitle the heir to any such person to hold the lands exempt from the payment of revenue after his demise, supposing the writing for the grant not to specify whether it was to be considered hereditary or otherwise, unless it shall be proved to the satisfaction of the court, that the grant, from the nature and denomination of it, is hereditary according to the ancient usages of the country. But upon the demise of the present possessor of any such grant, which may be adjudged not hereditary under this clause, if it shall appear that one or more successions, in virtue of whatever right, shall have taken place before the date of the *dewanny*, the land shall not be subjected to the payment of revenue under the decree, without the sanction of the Governor-General in Council, to whom a copy of the proceedings and decree of the court is to be transmitted, and to whom is reserved a power of declaring the lands subject to the payment of revenue or not, as may appear to him proper.

Fifth. The present possessors of lands now exempt from the payment of revenue, under such life-grants made previous to the *dewanny*, and declared by the preceding clause not to be hereditary, are prohibited from selling, or other-

wise transferring them, or mortgaging the revenue of them for a longer period than their own lives, and all such transfers and mortgages are declared illegal and void. It is to be understood, however, that if any such life grants shall have been confirmed as hereditary tenures by Government, or by the officers of Government empowered so to confirm them, they are not to be liable to the payment of revenue on the death of the present possessor, and are to be excepted from the other rules contained in this and the preceding clause. If doubts shall arise in any court as to the competency of the authority of any officer of Government to confirm any such life grant as hereditary, the court is to suspend its judgment, and report the circumstances to the Governor-General in Council, to whom a power is reserved of determining finally whether such officer possessed competent authority to confirm the grant as hereditary or not; and the court, upon receiving the determination of the Governor-General in Council, is to decide accordingly.

3. *First.* All grants for holding land exempt from the payment of revenue, which may have been made since the 12th August 1765, and previous to the 1st December 1790, corresponding with the 18th Aughun 1197 Bengal era, the 10th Aughun 1198 Fussily, the 18th Aughun 1198 Willaity, by any other authority than that of Government, and which may not have been confirmed by Government, or by any officer empowered to confirm them, are declared invalid.

Second. If doubts shall be entertained by any court as to the competency of the authority of any officer to confirm any such grant, the court is to suspend its judgment, and report the circumstances of the case to the Governor-General in Council, to whom a power is reserved of determining finally whether the officer possessed competent authority to confirm the grant, or otherwise; and the court, upon receiving the determination of the Governor-General in Council, shall decide accordingly.

Third. The rule contained in clause first, is not to be considered to extend to authorize the subjecting to the payment of revenue, land held exempt from the payment of it under grants made previous to the commencement of the Bengal year 1178, or Fussily or Willaity year 1179, (according as the land may be situated in Bengal, Behar, or Orissa,) under the signature of the chiefs of the late provincial councils, and the seals of those councils, agreeably to an authority vested in them by Government for granting land to be held exempt from the payment of revenue, the annual produce of which did not exceed one hundred rupees.

Fourth. Nor to authorize the subjecting to the payment of revenue, any land, the grants for which, whether for the life of the grantee, or otherwise, were made previous to the commencement of Bengal year 1178, or the Fussily or Willaity year 1179, (according as the land may be situated in Bengal, Behar, or Orissa,) where the quantity of land granted shall not exceed ten *beeghas*, and the produce of it is *bonâ fide* appropriated as an endowment on temples, or to the maintenance of Brahmins, or other religious or charitable purposes. The rule in this clause is declared to extend also to all grants of land whatever not exceeding ten *beeghas*, made previous to the *dewanny*, the produce of which may be now so appropriated.

4. This regulation, as far as regards lands alienated previous to the 1st December 1790, respects only the question whether they are liable to the payment of revenue or otherwise. Every dispute or claim regarding the proprietary right in lands alienated previous to that date, and which, in conformity to this regulation, may become subject to the payment of revenue, is to be considered as a matter of a private nature to be determined by the courts of *dewanny adawlut*, in the event of any dispute or claim arising respecting it, between the grantee and the grantor, or their respective heirs, or successors. The grantees

or the present possessors, until dispossessed by a decree of the *dewanny adawlut*, are to be considered as the proprietors of the lands, with the same right of property therein as is declared to be vested in proprietors of estates or dependant *talooks*, (according as the land may exceed or be less than one hundred *beeghas*, as specified in Sections 6, 7, and 21,) subject to the payment of revenue, and they are to execute engagements for the revenue with which their lands may be declared chargeable, either to Government, or to the proprietor, or farmer of the estate in which the lands may be situated, or to the officer of Government, (according as the revenue of the estate in which the land may be situated may be payable by the proprietor or a farmer, or collected *khas*,) under the rules for the decennial settlement. If by the decision of the *dewanny adawlut*, the proprietary right in the land shall be transferred, the person succeeding thereto, is in like manner to be responsible for the payment of the revenue assessed or chargeable thereon.

(See Ss. 15, 18 of Reg. VII of 1822).

5. By continuing the proprietary right in the land to the grantee or possessor in the cases specified in the preceding section, instead of dispossessing him of the land altogether, agreeably to former usage, and assessing the land in the mode prescribed in the two following sections, a liberal provision will be left to him. Where the grant may have been made before the Bengal year 1178, or the Fussyly or Willaity year 1179, the proprietor will hold his land, as an estate paying a fixed revenue of only half the amount assessed on other *malguzarre* lands in the country; and where the grant may have been made subsequent to the above-mentioned periods, he will hold the land as subject to the payment of the same revenue as other lands assessed with revenue under the rules for the decennial settlement as hereafter directed.

6. The revenue assessable under Section 9, on land not exceeding one hundred *beeghas* of the measurement that may prevail in the *pergunnah* wherein it may be situated, and whether lying in one village, or two, or more villages, and that may have been alienated by any one grant, made previous to the 1st December 1790, and which may be adjudged or become liable to the payment of revenue, shall belong to the person responsible for the discharge of the revenue of the estate or dependant *talook* in which the land may be situated, notwithstanding any thing said in Section 8, Regulation I of 1793; and he shall not be liable to the payment of any additional revenue, on account of the assessment which may be chargeable on such lands, during the continuance of the engagement under which he may pay the revenue of such estate, or dependant *talook*, when the land may be so adjudged liable to the payment of revenue. If the estate or dependant *talook* shall be held *khas* when the lands are decreed liable to the payment of revenue, the amount is to be collected by, and paid to whomsoever the rents and revenue of the estate or *talook* may be payable, until a settlement shall be concluded for the revenue of it, either with the proprietor, or a farmer. The land which may be so adjudged subject to the payment of revenue, is to be considered as a dependant *talook*.

7. The revenue assessable under Section 8, on land exceeding one hundred *beeghas* of the measurement that may prevail in the *pergunnah* wherein it may be situated, and whether lying in one village, or two, or more villages, and alienated by any one grant made previous to the 1st December 1790, and which may be adjudged or become liable to the payment of revenue, is declared to belong to Government. The lands specified in this section which may be adjudged liable to the payment of revenue, are to be considered as independent *talooks*.

8. *First*. The amount of the revenue payable from the lands specified in Section 7, is to be adjusted according to the following rules.

Second. If the grant shall have been made previous to the Bengal year 1178, or the Fussily or Willaity 1179, (according as the lands may be situated in Bengal, Behar, or Orissa,) the revenue to be paid to Government shall be equal to one-half of the annual produce of the land, calculating according to the rates at which other lands in the *pergunnah* of a similar description may be assessed. If any part of the land shall be uncultivated, the proprietor is to be required to bring it into cultivation, and to pay such *russud* or progressive increase, to be regulated with a reference to the reduced rate of the assessment on the cultivated land, as the Board of Revenue, with the sanction of the Governor-General in Council, may deem reasonable. The produce of the land shall be ascertained by a survey and measurement, one-half of the expense attending which is to be defrayed by the proprietor, in the event of his agreeing to the *jumma* required of him, and the other moiety by Government; or, by such other mode of investigation as the collector, with the sanction of the Board of Revenue, may judge advisable. If the proprietor shall refuse to agree to the assessment, the lands are to be let in farm or held *khas*, under the rules prescribed in Regulation VIII of 1793. If the proprietor shall agree to pay the revenue that may be required of him, the amount shall not be liable to any variation in future; but he, and his heirs and successors, shall hold the lands at such fixed revenue for ever.

Third. If the grant shall have been made subsequent to the Bengal year 1178, or the Fussily or Willaity year 1179, (according as the lands may be situated in Bengal, Behar, or Orissa,) the revenue or *jumma* to be paid to Government from the land, shall be assessed agreeably to the rules prescribed in Regulation VIII of 1793, for forming the settlement of estates paying revenue to Government, and the produce shall be ascertained and the expense of the investigation defrayed, in the manner specified with regard to the lands in the preceding clause. If the proprietor shall refuse to agree to the assessment, the lands are to be let in farm or held *khas* under the rules for the decennial settlement. If the proprietor shall agree to pay the revenue that may be required of him, the amount shall not be liable to any variation in future; but he, and his heirs and successors, shall hold the land at such fixed revenue for ever.

See 8 B. L. R., 197; B. L. R., Sp. Vol. 175.

9. The rules in the preceding section are to be held applicable to the lands specified in Section 6, with this difference, that the proprietor, farmer, dependant *talukdar*, or officer of Government, to whom the revenue may be payable, shall ascertain the produce of the land without subjecting the grantee to any expense; and submit the accounts of it to the collector, who shall fix the revenue to be paid from the lands in perpetuity, reporting the amount for the confirmation of the Board of Revenue, who are empowered, in cases in which it shall appear to them proper, to increase or reduce the amount. If the proprietor shall agree to pay the revenue required of him, he and his heirs and successors shall hold the lands as a dependant *taluk*, subject to the payment of such fixed revenue for ever.

10. All grants for holding land exempt from the payment of revenue, whether exceeding or under one hundred *beeghas*, that have been made since the 1st December 1790, or that may be hereafter made, by any other authority than that of the Governor-General in Council, are declared null and void, and no length of possession shall be hereafter considered to give validity to any such grant, either with regard to the property in the soil, or the rents of it. And every person who now possesses, or may succeed to the proprietary right in any estate, or dependant *taluk*, or who now holds, or may hereafter hold any estate or dependant *taluk* in farm of Government, or of the proprietor, or any other person, and every officer of Government appointed to make the collections from any estate or *talook* held *khas*, is authorized and required to collect the rents from

such lands at the rates of the *pergunnah*, and to dispossess the grantee of the proprietary right in the land, and to re-annex it to the estate or *talook* in which it may be situated, without making previous application to a court of judicature, or sending previous or subsequent notice of the dispossession or annexation to any officer of Government; nor shall any such proprietor, farmer, or dependant *talukdar*, be liable to an increase of assessment on account of such grants which he may resume and annul, during the term of the engagements that he may be under for the payment of the revenue of such estate or *talook* when the grant may be so resumed and annulled. The managers of the estates of disqualified proprietors, and of joint undivided estates, are authorized and required to exercise, on behalf of the proprietors, the powers vested in proprietors by this section.*

11. Proprietors, or farmers of land, or dependant *talukdars*, who may deem themselves entitled to the revenue of any land of the description of that specified in Section 6 situated in their respective estates, farms, or *talooks*, are to institute a suit for the recovery of it in the court of *dewanny adawlut*. Any proprietor, or farmer of land, or dependant *talukdar* or other person, subjecting such lands to the payment of revenue, without having previously obtained a judicial decree for that purpose, shall be liable to be sued for damages by the parties injured. Where estates or dependant *taluks* may be held *khas*, the right of suing for the recovery of the revenue from the lands specified in Section 6, is to be considered as vested in the party to whom the collections from the estate or *taluk* may be payable. If the estate or *talook* be held *khas* by Government, the *tehsildar* or other officer is to sue for the revenue chargeable on such lands in the room of the proprietor, but under the directions of the collector.

12, 13, 14. [Repealed by Reg. II of 1819.]

15. The collectors of the revenue are to defend all suits that may be instituted against Government, by any individual claiming a right to hold lands exempt from the payment of public revenue; and such suits, and the suits which the Board of Revenue may direct the collector to institute, are to be defended and prosecuted by the *vakel* of Government under the instructions of the collector; and in the event of Government being cast, either wholly or in part, or, if the collector shall be dissatisfied with the decree in any respect, all the rules contained in Section 30, Regulation XIV of 1793, and the other sections in that regulation, respecting decisions given against a collector in any *zillah* court, in suits instituted against him by any proprietor or farmer of land, for sums of money demanded or actually received by him as arrears of revenue, are to be held applicable to such decree, with this difference, that the suit, from the commencement of it, is to be defended or carried on at the expense of Government, and in the event of the Board of Revenue not deeming it proper to order an appeal against the decision of the *zillah* court to be preferred to the provincial court of appeal, or against the decision of the provincial court to the Sudder Dewanny Adawlut, in the event of their ordering the cause to be appealed to the provincial court, and of its being given against them therein, they are to report their reasons in both cases for not preferring the appeal to the Governor-General in Council, who will direct the cause to be appealed or not, in either case, as may appear to him proper.

16. [Repealed by Reg. II of 1819.]

17. If it shall appear to any court of judicature during the course of a trial, that a grant for land to be held exempt from the payment of revenue, dated prior to the 1st December 1790, has been forged, or that the name of the original grantee has been erased, and any other name substituted, or that any name not

* Repealed by s. 28 of Act X of 1859.

in the original grant has been inserted, or that the denomination of the tenure in the original grant has been erased or altered, or that the date of the grant has been changed, or that the grant has been antedated, the grant shall be adjudged null and void, as far as regards the exemption of the land from the payment of revenue, and the land shall be subjected to the payment of revenue accordingly.

18. [Repealed by Act XVI of 1874.]

19.c [Repealed by Reg. II of 1819.]

20. Grants of land, which from the terms of the grant, or the nature of the tenure, are hereditary, and are declared valid by this Regulation, or which have been or may be confirmed by the British Government, or any of its officers possessing competent authority to confirm them, are declared transferable by gift, sale, or otherwise; and all persons succeeding to such grants by whatever mode, are required to register their names in the office of the collector within six months after they may succeed to the grant. But all such purchases are to be considered as made at the risk of the purchaser, and in the event of the grant not proving to be hereditary, or not to have been made or confirmed by the British Government, or its officers possessing competent authority, the transfer is not to preclude the land from being subjected to the payment of revenue under this Regulation.

21, 22. [Repealed by Act VII of 1876, B. O.]

23. [Repealed by Act VIII of 1868.]

24. All persons actually holding lands exempt from the payment of public revenue, whether exceeding or under one hundred *beeghas*, in virtue of grants made previous to the 1st December 1790, and whether made or confirmed by the Government of the country for the time being, or any other authority, shall be allowed one year from the date of the publication prescribed in the following section, to register the required particulars respecting their grants in the office of the collector of the revenue of the *zillah* in which the lands may be situated.

25. To prevent any pleas being hereafter urged of ignorance of the rule contained in the preceding section, the collector of each *zillah*, upon the receipt of this Regulation, is to cause the following publication, which shall be written in the Bengal and Persian languages in Bengal and Orissa, and in the Persian language and the Hindustani language and Nagri character in Behar, and attested with their official seals and signatures, to be fixed up in the principal *cutcherree* of every proprietor and farmer of land in the *zillah* paying revenue immediately to Government, and of every native collector in lands held *khas* by Government; and, where the estate of any proprietor with whom a settlement may have been concluded, or the farm of any farmer, or lands held *khas*, shall consist of two or more whole *pergunnahs*, or portions of *pergunnahs*, he shall cause the publication to be fixed up in the principal *cutcherree* in each *pergunnah*, or portion of *pergunnah*, comprised in such estate, farm, or *khas* lands, and take a receipt, specifying the date on which the publication may be fixed up, from such proprietor, farmer, or native officer, who shall respectively be held responsible for the paper remaining so affixed for one year from the date of it.

"In conformity to Regulation XIX of 1793, every person being actually in possession of *bermooter*, *bishunpereet*, or other land, now exempt from the payment of revenue, in the estate of —, or the farm of —, or the *khas* lands under the charge of —, whether exceeding or under one hundred *beeghas* of the measurement of the *pergunnah* in which the land may be situated, and whether comprising or lying in one village, or two, or more villages, and which may be held in virtue of any grant made previous to the 1st December 1790, corresponding with the 18th Aghun 1197, Bengal era, the 10th Aghun, 1198, Fussily,

the 18th Anghun, 1198, Willaity, and whether made or confirmed by the Government of the country for the time being, or its officers, or any other authority, are required to register the following particulars respecting such lands in the office of the collector of the *zillah*, before the expiration of one year from the date of this publication. If any holders of such grants, shall not so register their grants either in persons, or by *vakeel*, with a *vakalutnamah*, attested by two credible witnesses, and given for the express purpose of registering the grant, the lands will be considered liable to the payment of revenue in the same manner as if they had been adjudged to be so by a final decree of a court of judicature. Persons having claims only to hold land exempt from the payment of revenue, but who do not now hold the lands exempt from the payment of revenue, are not to register the land so claimed by them.

Denomination of the grant whether *bishunperet*, *bermooter*, or other tenure.

Name of the grantor.

Name of the original grantee.

Name of the present possessor, and, if he be not the original grantee, his relationship to him, and whether he succeeded to the land hereditarily, or by purchase, or what other mode.

Date of the deed, if the grant be in writing, and if not, the date on which the grant was made.

The name or names of the village or villages comprised in the grant, or in which the land may be situated.

The measurement of each village, or the villages, or the land included in the grant.

The *pergunnah* or *pergunnahs* in which the lands may be situated.

A copy of the original grant or other writings, under which the land may be held."

26. If any person in possession of any such grant of land now held exempt from the payment of revenue, shall omit to register it by the time prescribed in the publication, together with as accurate a detail of the particulars thereby required as he may be able to furnish, the land included in the grant, shall by such omission, become subject to the payment of revenue, in the same manner as if it had been adjudged liable to the payment of revenue by a final decree of a court of judicature, and the collector, if the land shall exceed one hundred *beeghas*, shall proceed to assess the lands accordingly; and if it shall be under one hundred *beeghas*, the party to whom the revenue of the land may be payable under section 6, is empowered to assess the lands as therein directed. The Governor-General in Council, however, reserves to himself the power of admitting any grant upon the register after the expiration of the prescribed time, in the event of the possessor of the land showing good and sufficient cause to his satisfaction for not having registered it within the limited period, and the Board of Revenue are to report to the Governor-General in Council every case in which persons who may have omitted to register their grants as required, may appear to them entitled to have their grants admitted upon the register.

27. After the expiration of the period limited for registering grants, all grants not registered within the prescribed time, and which may not be subsequently admitted on the register by the Governor-General in Council, are declared invalid as far as regards the exemption from the payment of revenue, and the land shall be assessed with revenue as directed in Section 26.

28. It is expressly declared, however, that the registry of grants under this regulation, is not to be considered as an admission of the right of the person in whose name they may be registered, to the property in the soil, or of his title to hold the lands exempt from the payment of revenue. Any person

will be at liberty to sue him in the *dewanny adawlut* for the former, and he will be liable to be sued for the recovery of the latter, by the collector, with the sanction of the Board of Revenue, in the event of it appearing to that Board that the lands are liable to the payment of revenue.

29—34. [Repealed by Act VII of 1876 B. C.]

35. Upon the arrival of the period when the separation is to be carried into effect, the collector of the *zillah* from which the separation may be directed to be made, is to transmit to the judge of the *dewanny adawlut* of his *zillah*, and also to the provincial court of appeal of the division, copies of the entries in the last periodical register, and register of intermediate resummptions, which may relate to the grants to be separated from his *zillah*; and the collector to whose *zillah* the annexation may be made, is to transmit copies of the abovementioned entries (with which he is directed to be furnished in the preceding section) to the judge of the *zillah*, and to the provincial court of appeal of the division in which it may be included. Immediately upon the receipt of these papers, the courts from the jurisdiction of which the separations may be made, are to transmit the papers in the causes depending before them, which, in consequence of the separation, may become cognizable in any other provincial court of appeal, or *zillah* court, to such court, and to cause notification thereof to be communicated to the parties in writing.

36—44. [Repealed by Act VIII of 1876 B. C.]

45, 46. [Repealed by Act XII of 1876].

47. All the rules in this regulation respecting lands now held, or that may be claimed to be held, exempt from the payment of revenue, under life grants made previous to the date of the Company's accession to the *dewanny*, are to be considered equally applicable to grants made previous to that date for a term only.

48. No part of this regulation is to be considered to annul any grants for holding land exempt from the payment of revenue, made or confirmed by the late superintendents of the *bazee-zemin dufter* in Bengal, in virtue of the powers vested in them.

49. Nor to extend to *jaghire*, *altumgah*, *mulddul-mansh*, *ayma*, or other grants of land termed *balshahee*, or royal, and held, or stated to be held, under a royal *furmann*. The rules applicable to such grants are contained in Regulation XXXVII, 1793.

A. D. 1793. REGULATION XXXVII.

A Regulation for re-enacting with modifications, the rules passed on the 23rd April 1788, and subsequent dates, for trying the validity of the titles of person holding, or claiming a right to hold, *altumgah*, *jaghire*, and other lands, exempt from the payment of public revenue, under grants termed *Balshahee* or *Royal*, and for determining when certain grants of that description shall be considered to have expired; and for fixing the amount of the public Revenue to be assessed upon the lands, the grants for which may expire, or be adjudged invalid.*

By the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every *beegah* of land, unless it transfers its right thereto for a term, or in perpetuity. As a necessary consequence of this law, every grant or alienation of Government's proportion of the produce of lands with-

* Declared to apply to the whole of the Lower Provinces except the scheduled Districts, Act XV of 1874.

out its sanction, was considered null and void. Had the validity of such grants or alienations been admitted, it is obvious that the public revenue would have been liable to gradual diminution. Under the native Government, grants were occasionally made of the Government's share of the produce of lands for the support of the families of persons who had performed public services, for religious or charitable purposes, for maintaining troops, and for other services. The British Government continued to the grantees or their heirs, such of these grants as were hereditary, and were made before the date of the Company's accession to the *dewanny*, provided the grantees or their heirs had obtained possession previous to that date; but those grants which were for life only, have been invariably considered as resumable on the death of the grantees. The complete register of these grants having been formed on the Company's accession to the *dewanny*, or subsequent to that period, many persons have retained possession of lands under fabricated or antedated grants, or have succeeded to life grants on the demise of the original grantee, or former possessor, without the sanction of Government. The Governor-General in Council, deeming it incumbent on him to resume the public dues from lands held under invalid tenures, as well as the revenue of all lands the grants for which might expire, and as the proprietors of estates were not entitled to collect such of the public dues from the lands included in their estates, as Government had judged it advisable to transfer to individuals, or to resume those which had been alienated or were appropriated without authority, the amount of the revenue of the lands having in both cases been excluded from the assets on which the settlement was to be concluded, it was made a rule at the time of forming the decennial settlement, and which has been re-enacted by Section 34, Regulation VIII, 1793, that the *jumma* assessed upon the estates of individuals, was to be considered "as exclusive and independent of all existing *lakheraje* lands, whether exempted from the *kheraje* or public revenue, with or without due authority;" and by the third clause of the seventh article of the proclamation contained in Regulation I, 1793, which specifies the conditions under which Government declared the decennial settlement permanent, it is expressly stipulated, "that the Governor-General in Council will impose such assessment as he may deem equitable on all lands at present alienated and paying no public revenue, which have been or may be proved to be held under illegal or invalid titles." The Governor-General in Council, however, at the same time that he is desirous of recovering the public dues from lands held under invalid tenures, is equally solicitous that persons holding lands under grants that are declared valid, should be secured in the quiet possession and enjoyment of them. With this view, and to obviate all injustice, or extortion, in the enquiry into the titles of persons possessing lands under such grants, he has resolved that all claims of the public for the resumption of such grants, (provided the grantees or persons in possession register their grants as required in this regulation,) shall be tried in the courts of judicature, that no such grants may be resumed until the title of the grantee or present possessor shall have been adjudged invalid by a final judicial decree. Upon the above grounds, and with a view to facilitate the resumption of invalid grants, as well as to prevent any grants being hereafter made without the authority of Government, and further, that Government and its officers may at all times have in their possession a correct register of the lands in the several *zillahs*, held exempt from the payment of revenue under *badshahae* grants, the following rules, containing the rules passed on the 23rd April 1788, and subsequent dates with modifications, have been enacted.

2. *Altumgah*, *jaghire*, *ayma*, *muddandmaush*, or other *badshahae* grants, for holding land exempt from the payment of revenue, made previous to the 12th

August 1765, the date of the Company's accession to the *dewanny*, shall be deemed valid, provided the grantee, actually and *bonâ fide*, obtained possession of the land so granted previous to that date, and the grant shall not have been subsequently resumed by the officers or the orders of Government. If it shall be proved to the satisfaction of the court, that the grantee did not obtain possession of the land so granted previous to the 12th August 1765, or that he did obtain possession of it prior to that date, but that it has been since resumed by the officers or the orders of Government, the grant shall not be deemed valid.

Second. In the event, however, of a claim being preferred by any person to hold land exempt from the payment of revenue, under a *badshahee* grant made previous to the date of the Company's accession to the *dewanny*, and on it being proved to the satisfaction of the court in which the suit may be instituted in the first instance, or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previous to that date, but that it was subjected to the payment of revenue posterior thereto by an officer of Government, and the court shall entertain doubts as to the competency of such officer, under the powers vested in him, to resume the grant and subject the lands to the payment of revenue, the court shall suspend its judgment, and report the circumstances to the Governor-General in Council, to whom a power is reserved of determining whether such officer was or was not competent to resume the grant; and upon receiving the determination of the Governor-General in Council, the court is to decide accordingly. No such claim, however, to hold exempt from the payment of revenue, land that may have been subjected to the payment of revenue for the twelve years preceding the date on which the claim may be instituted, shall be heard by any *zillah* or city court, unless the claimant can show good and sufficient cause for not having preferred the claim to a competent authority within the twelve years, and proceeded in it, as required by Section 14, Regulation III of 1793.

Third. But no part of the two preceding clauses, is to be construed to empower the courts to adjudge any person not being the original grantee, entitled to hold land paying revenue to Government, exempt from the payment of revenue, under a *jaghire* or other grant made previous to the Company's accession to the *dewanny*, where the grant may expressly specify it to have been given for the life of the grantee only, or, supposing no such specification to have been made in the grant, or the grant not to be forthcoming, where the grant, from the nature and denomination of it, shall be proved to be a life tenure only, according to the ancient usages of the country.

Fourth. Nor to entitle the heirs of any person now holding lands exempt from the payment of public revenue under a *jaghire*, or other *badshahee* life grant, made previous to the *dewanny*, to succeed to, and hold such land exempt from the payment of revenue upon the demise of the present possessor, where the grant may expressly specify it to have been given for the life of the grantee only, or, supposing no such specification to have been made in the grant, or the grant not to be forthcoming, where from the nature and denomination of the grant it shall be proved to be a life tenure only, according to the ancient usages of the country.

Fifth. The present possessors of lands now exempt from the payment of revenue under such *jaghire* or other life grants made previous to the *dewanny*, and declared by the preceding clause not to be hereditary, are prohibited from selling, or otherwise transferring them, or mortgaging the revenue of the lands for a longer period than their own lives, and all such transfers and mortgages which have been or may be made, are declared illegal and void.

3. *First.* All *badshahee* grants for holding land exempt from the pay-

ment of revenue, which may have been made since the 12th August 1765, by any other authority than that of Government, and which may not have been confirmed by Government, or by any officer empowered to confirm them, are declared invalid.

Second. If doubts shall be entertained by any court as to the competency of the authority of any officer to confirm any such grant, the court is to suspend its judgment, and report the circumstances of the case to the Governor-General in Council, to whom a power is reserved of determining finally whether the officer possessed competent authority to confirm the grant, or otherwise; and the court, upon receiving the determination of the Governor-General in Council, shall decide accordingly.

4. It is to be understood that this Regulation respects only the Government proportion of the revenue arising from lands held or claimed to be held under *badshahee* grants, and whether Government is entitled to resume or retain such revenue or otherwise. Every dispute or claim regarding the *zemindaree* or proprietary right in lands included in any grant, is to be considered as a matter of a private nature between the contending parties, and is to be determined in the *dewanny adawlut*.

5. When a *jaghire* or other life grant shall escheat to Government, the collector is immediately to attach the revenue of the lands, and report the circumstance to the Board of Revenue, who are to obtain the orders of the Governor-General in Council, regarding the resumption of the grant.

6. When any *badshahee* grant shall be resumed, or expire, or escheat to Government, the revenue to be paid to Government from the lands included in it shall be assessed and the settlement made in perpetuity, agreeably to the rules for the decennial settlement contained in Regulation VIII of 1793, with the person possessing the *zemindaree* or proprietary right in the lands, whoever he may be. If the proprietor shall refuse to pay the *jumma* demanded of him, the lands shall be held *khas*, or let in farm, as directed in that Regulation.

1 B. L. R., P. C., 44; 8 Moore's I. A. 500; I. L. R., 1 Cal., 391.

7, 8, 9. [Repealed by Reg. II of 1819.]

10. Any person having a claim to hold lands paying revenue, exempt from the payment of revenue under a *badshahee* grant, must institute his claim against Government, who alone can be the defendant in such suits, in the *dewanny adawlut* of the *zillah*, in the same manner as in cases where individuals may claim a right to hold lands paying revenue, exempt from the payment of revenue under grants not of the description of those termed *badshahee*, in virtue of Regulation XIX of 1793. The collectors of the revenue are to defend all such suits as may be instituted against Government, and such suits, and the suits which the Board of Revenue may direct the collector to institute, are to be defended or prosecuted by the *vakeel* of Government, under the instructions of the collector; and in the event of Government being cast, either wholly or in part, or, if the collector shall be dissatisfied with the decree in any respect, all the rules contained in section 30,* Regulation XIV of 1793, and the other sections in that Regulation, respecting decisions given against a collector in any *zillah* court, in suits instituted against him by any proprietor or farmer of land, for sums of money demanded or actually received by him as arrears of revenue, are to be held applicable to such decree, with this difference, that the suit, from the commencement of it, is to be defended or carried on at the expense of Government, and in the event of the Board of Revenue not deeming it

* Repealed by Act XVI of 1874.

proper to order an appeal from the decision of the *zillah* court to be preferred to the provincial court of appeal, or from the decision of the provincial court to the *Sudder Dewanny Adawlut*, in the event of their ordering the cause to be appealed to the provincial court, and of its being given against them therein, they are to report their reasons in both cases for not preferring the appeal, to the Governor-General in Council, who will direct the cause to be appealed or not in either case as may appear to him proper.

11. [Repealed by Reg. II of 1819.]

12. If it shall appear to any court of judicature during the course of a trial, that a grant has been forged, or that the name of the original grantee has been erased, and any other name substituted, or that any name not in the original grant has been inserted, or that the denomination, or the terms of the tenure in the original grant, have been erased or altered, or that the date of the grant has been changed, or that the grant has been antedated, the grant shall be adjudged null and void.

13. [Repealed Act XV of 1874.]

14. [Repealed by Reg. II of 1819.]

15. *Altumgah*, *ayma*, and *muddudmaush* grants, are to be considered as hereditary tenures. These and other grants which from the terms or nature of them may be hereditary, and are declared valid by this Regulation, or which have been or may be confirmed by the British Government, or any of its officers possessing competent authority to confirm them, are declared transferable by gift, sale, or otherwise, and all persons succeeding to such grants by whatever mode, are required to register their names in the office of the collector, within six months after they may succeed to the grant. But all such purchases are to be considered as made at the risk of the purchaser, and in the event of the grant not proving to be hereditary, or not to have been made or confirmed by the British Government, or its officers possessing competent authority, the transfer is not to preclude the land from being subjected to the payment of revenue under this Regulation. *Jaghires* are to be considered as life tenures only, and with all other life tenures, are to expire with the life of the grantee, unless otherwise expressed in the grant.

I. L. R., 3 Cal., 210; 6 B. L. R., 652; 5 B. L. R., 529; I. L. R., 5 Cal., 388; 740; I. L. R., 3 Bom., 186; I. L. R., 9 Cal., 187; 18 W. R. P. C., 321; 2 N. W. P., 284; 6 Sel. Rep. 204; W. R. Sp. 39; 249; 7 W. R., 178; 10 W. R., 255.

16, 17, 18. [Repealed by Act VII of 1876, B. C.]

19. All persons actually holding lands exempt from the payment of the public revenue, under *badshahee* grants, and whether made or confirmed by the Government of the country for the time being, or by whatever authority, shall be allowed one year from the date of the publication prescribed in the following section, to register the required particulars respecting their grants in the office of the collector of the revenue of the *zillah* in which the lands may be situated.

20. To prevent any pleas being hereafter urged of ignorance of the rule contained in the preceding section, the collector of each *zillah* in which any *jaghire*, *altumgah*, *ayma* or *muddudmaush*, or lands held under *sunnu*s or grants, termed *badshahee*, may be situated, upon the receipt of this Regulation, is to cause the following publication, which shall be written in the Bengal and Persian languages, in Bengal and Orissa, and in the Persian language, and the Hindustani language and Nagree character, in Behar, and attested with their official seals and signatures, to be fixed up in the principal *cutcherees* of the holders of grants of the description of those specified in this Regulation, and take a receipt from the holder of each grant, or the person entrusted with the management of it, specifying the date on which the publication may be fixed up, and that he will be responsible for the paper remaining so affixed for one year from the date of it.

"In conformity to Regulation XXXVII of 1793, every person being actually in possession of *altumgah*, *jaghire*, *ayma*, *muddudmaush*, or other land, now exempt from the payment of revenue, and held under *badshahee* grants, in the *zillah* of —, whether made or confirmed by the Government of the country for the time being, or by whatever authority, are required to register the following particulars respecting such grants in the office of the collector of the *zillah*, before the expiration of one year from the date of this publication. If any holders of such grants shall not register their grants either in person, or by a *vakeel* with a *vakalat-namah*, attested by two credible witnesses, and given for the express purpose of registering the grants, the grants will be considered liable to resumption, and the lands chargeable with revenue, in the same manner as other lands subject to the payment of revenue. Persons having claims only to hold land exempt from the payment of revenue under such grants, but who do not now hold the lands exempted, are not to register the lands so claimed by them.

Denomination of the grant, whether *altumgah*, *jaghire*, or other tenure.

By whom granted.

Name of the original grantee.

Name of the present possessor, and, if he be not the original grantee, his relationship to him, and whether he succeeded to the land hereditarily, or by purchase, or what other mode.

Date of the grant.

The name or names of the *mohauls* or villages, or lands, comprised in the grant, or in which the land may be situated.

The names of the *zemindar* or other proprietor of the *mohauls* or villages, or lands included in the grant, whether such *zemindaree* or proprietary right, shall be vested in the grantee, or any other person.

The measurement of each *mohaul* or village, or the land included in the grant.

The *pergunnah* or *pergunnahs* in which the lands may be situated.

A copy of the original grant, and other writings under which the land may be held."

21. If any person in possession of any such grant that may be now in force, shall omit to register it by the time prescribed in the publication, together with as accurate a detail of the particulars thereby required as he may be able to furnish, the grant shall by such omission become subject to resumption, and the lands shall become liable to the payment of revenue to Government. The Governor-General in Council, however, reserves to himself the power of admitting any grant upon the register after the expiration of the prescribed time, in the event of the possessor showing good and sufficient cause to the satisfaction for not having registered it within the limited period; and the Board of Revenue are to report to the Governor-General in Council, every case in which persons who may have omitted to register their grants as required, may appear to them entitled to have their grants admitted upon the register.

22. After the expiration of the period limited for registering grants, all grants not registered within the prescribed time, and which may not be subsequently admitted on the register by the Governor-General in Council, are declared forfeited, and the lands shall be assessed with revenue agreeably to the rules prescribed for the decennial settlement.

23. It is expressly declared, however, that the registry of a grant under this Regulation, is not to be considered as an admission of the right of the person in whose name it may be registered, to the property in the soil, nor of the validity of his grant. Any person will be at liberty to sue in the *dewanny adawlat* for the former, and he will be liable to be sued for the resumption of the grant by the

collector, with the sanction of the Board of Revenue, in the event of it appearing to that Board, that the grant is invalid.

24. [Repealed by Act VII of 1876, B. C.]

25. [Repealed by Act XVI of 1874, B. C.]

26—29. [Repealed by Act VII of 1876, B. C.]

30. Upon the arrival of the period when the separation is to be carried into effect, the collector of the *zillah* from which the separation may be directed to be made, is to transmit to the judge of the *dewanry adawlut* of his *zillah*, and also to the provincial court of appeal of the division, copies of the entries in the last periodical register, and register of intermediate occurrences, which may relate to the grants to be separated from his *zillah*; and the collector to whose *zillah* the annexation may be made, is to transmit copies of the above-mentioned entries (with which he is directed to be furnished in the preceding section) to the judge of the *zillah*, and to the provincial court of appeal of the division in which the lands may be included. Immediately on the receipt of these papers, the courts from the jurisdiction of which the separation may be made, are to transmit the papers in the causes depending before them, which in consequence of the separation, may become cognizable in any other provincial court of appeal, or *zillah* court, to such court, and to cause notification thereof to be communicated to the parties in writing.

31—33. [Repealed by Act VII of 1876, B. C.]

34. [Repealed by Act XVI of 1874.]

35—41. [Repealed by Act VII of 1876, B. C.]

42. No part of this Regulation is to be considered to extend to lands held, or stated to be held, exempt from the payment of public revenue under grants not being of the description of those termed *badshahee* or royal. The rules applicable to such grants are contained in Regulation XIX of 1793.

REGULATION XXIX OF 1814.

A Regulation for the settlement of certain mahals in the district of Birbhum, usually denominated the Ghatwali mahals. Passed on the 3rd of December 1814.

1. Whereas the lands held by the class of persons denominated Ghatwals, in the district of Birbhum, form a peculiar tenure to which the provisions of the existing Regulations are not expressly applicable;

and whereas every ground exists to believe that, according to the former usages and constitution of the country, this class of persons are entitled to hold their lands, generation after generation, in perpetuity, subject nevertheless to the payment of a fixed and established rent to the zamindar of Birbhum, and to the performance of certain duties for the maintenance of the public peace and support of the Police;

and whereas the rents payable by those tenants have been recently adjusted after a full and minute inquiry made by the proper officers in the Revenue Department;

and whereas it is essential to give stability to the arrangements now established among the Ghatwals, the following rules have been adopted, to be in force from the period of their promulgation in the district of Birbhum.

2. A settlement having lately been made on the part of the Government with the Ghatwals in the district of Birbhum, it is hereby declared that they and their descendants in perpetuity shall be maintained in possession of the lands,

so long as they shall respectively pay the revenue at present assessed upon them, and that they shall not be liable to any enhancement of rent so long as they shall punctually discharge the same and fulfill the other obligations of their tenure.

3. The ghatwali lands shall be considered, as at present, to form a part of the zamindari of Birbhum; but the rents of Ghatwals shall be paid direct to the Assistant Collector stationed at Suri, or to such other public officer as the Board of Revenue, with the sanction of the Governor-General in Council, may direct to receive the rents.

4. The difference between the amount of the revenue assessed on the Ghatwals and the fixed assessment of revenue in this portion of the zamindari of Birbhum payable to Government, shall be paid to the zamindar of Birbhum, and his heirs and successors, in perpetuity.

5. Should any of the Ghatwals at any time fail to discharge their stipulated rents, it shall be competent for the Governor-General in Council

to cause the ghatwali tenure of such defaulter to be sold by public sale in satisfaction of the arrears due from him in like manner, and under the same rules, as lands held immediately of Government, or to make over the tenure of such defaulter to any person whom the Governor-General in Council may approve on the condition of making good the arrear due; or

to transfer it by grants assessed with the same revenue, or with an increased or reduced assessment, as to the Government may appear meet; or

to dispose of it in such other form and manner as shall be judged by the Governor-General in Council proper.

Should any increase of revenue be obtained from the operation of any arrangements of the nature above described, such increase shall be paid in conformity to the tenor of the preceding article to the zamindar of Birbhum, his heirs and successors.

See notes under Section 181 of the Bengal Tenancy Act, ante, pp. 379-384.

REGULATION II OF 1819.

A Regulation for modifying the provisions contained in the existing Regulations regarding the resumption of the revenue of lands held free of assessment under illegal or invalid tenures, and for defining the right of Government to the revenue of lands not included within the limits of estates for which a settlement has been made.

1. The rules contained in Regulations XIX and XXXVII of 1793 relative to the resumption of the revenue of lands held free of assessment under illegal or invalid tenures and the corresponding provisions enacted in subsequent years having been found inadequate to secure the just rights of Government, have from time to time been partially repealed or modified.

Those rules, however, are still in force within several of the districts subordinate to this Presidency, and the Regulations by which they have in other districts been superseded appear to be in several respects defective.

It further appears to be necessary, in order to obviate all misapprehension on the part of the public officers or of individuals, to declare generally the right of Government to assess all lands which, at the period of the decennial settlement, were not included within the limit of an estate for which a settlement was concluded with the owners, not being lands for which a distinct settlement may have been made since the above period, nor lands held free of assessment under a valid and legal title; and at the same time formally to renounce all claim on the part of Government to additional revenue from lands which were included within the limits of estates for which a permanent settle-

ment has been concluded at the period when such settlement was so concluded, whether on the plea of error or fraud, or on any pretext whatever, saving of course mahals expressly excluded from the operation of the settlement. With the view therefore of establishing, on proper principles, one uniform course of proceeding in resuming the revenue of lands liable to assessment, so that the dues of Government may be secured without infringement of the just rights of individuals, the following rules have been enacted to be in force from the date of their promulgation throughout the provinces immediately subordinate to the Presidency of Fort William.

2. [*Repealed by Act No. XVI of 1874.*]

3. *First.* It is hereby declared and enacted that all lands which at the period of the decennial settlement were not included within the limits of any pargana, mauza, or other division of estates for which a settlement was concluded with the owners, not being lands for which a distinct settlement may have been made since the period above referred to, nor lands held free of assessment under a valid and legal title of the nature specified in Regulations XIX and XXXVII of 1793, and in the corresponding Regulations subsequently enacted, are and shall be considered liable to assessment in the same manner as other unsettled mehals, and the revenue assessed on all such lands whether exceeding one hundred bighas or otherwise shall belong to Government.

Provided, however, that nothing in the above rule shall be construed to affect the rights reserved to zemindars, taluqdars, and other proprietors of estates with whom a permanent settlement has been concluded, to the exclusive enjoyment of the rent assessed on lands held on an invalid tenure free of assessment within the limits of their respective estates and taluqs, and of which the extent may not exceed one hundred bighas if in Bengal, Behar, or Orissa, and fifty bighas if within the Province of Benaras.

Second. The foregoing principles shall be deemed applicable not only to tracts of land such as are described to have been brought into cultivation in the Sundarbuns, but to all chars and islands formed since the period of the decennial settlement, and generally to all lands gained by alluvion or dereliction since that period whether from an introcession of the sea, an alternation in the course of rivers, or the gradual accession of soil on their banks.

Third. The same principle shall likewise be deemed applicable to all lands which though included at the permanent settlement within the limits of taluqs held by individuals under special pattahs from the collector, such as the patitabadi and jangalbari taluqs in the districts of the Twenty-four Parganas and Jessore may not have been permanently assessed at the above-mentioned period.

Provided, however, that in respect to such lands if in the possession of the original patta holder or his legal representative, the conditions of the patta in regard to the assessment of the land included within the limits specified in that instrument shall be strictly maintained.

The several rules prescribed in Regulations XIX and XXXVII of 1793 and Regulations XLI and XLII of 1795; Regulations XXXI and XXXVI of 1803, Regulations VIII and XII of 1805 for determining the validity of grants for holding lands exempt from the payment of public revenue are hereby declared applicable to grants for holding lands under makarrari or other tenures limiting the demand of Government.

Provided, however, that nothing in this section shall be construed to affect the rules contained in Regulation XIII of 1793 relative to the assessment of lands held under valid grants or leases of the above nature, nor to alter the provisions contained in Regulation I of 1815 by which tenures of that description are declared liable to assessment on the death of the grantee.

5. *First.* Whenever a collector of revenue or other officer exercising the powers of collector shall have reason to believe that any lands lying within the sphere of his official control are liable to assessment, either as being held under an invalid tenure free of assessment or at an inadequate jama, or as being liable to assessment on the principles stated in section 3 of this Regulation, he shall report the circumstances to the Board of Revenue or other authority exercising the powers of that Board who, should he be of opinion that proper grounds exist for enquiry, shall direct the collector or other officer aforesaid to enter on an investigation of the case in the manner hereafter mentioned.

Second. The collector on receiving the authority of the Board of Revenue shall call the party before him by a notice stating the demand of Government on the lands, and requiring him to attend either in person or by wakil within the period of one month and to produce all sanads or other writings in virtue of which he may possess the lands or under which they may have been or may be claimed to be held free of assessment or at a fixed jama.

Third. If the persons whose lands it is proposed to assess have an accredited agent at the sadar station with general powers to act for his principal the notice to be issued under the preceding clause shall be tendered to such agent to be communicated by him to his principal, and agent's acknowledgment to be endorsed upon it shall be accepted as a sufficient service of it, if he be desirous of giving such acknowledgment in preference to the notice being served on the person of his principal by a chaprasi or peon of the collector.

Fourth. If the person the revenue of whose lands it is proposed to resume shall not have an accredited agent at the sadar station of the description above mentioned, or if such agent shall decline receiving the notice for communication to his constituent, and the defendant be resident within the collectorship, it shall be served on him through the nazir of the collector by a single chaprasi or peon, who shall require the acknowledgment of the party to be endorsed upon it, or if he be absent from his usual places of residence the acknowledgment of his principal agent or of any person acting for him during his absence.

If the party be resident within the jurisdiction of any other collectorship than that in which the lands proposed to be assessed are situated, the notice shall be transmitted to the collector of the district in which the party may reside to be served in the manner above directed.

If the party be neither resident within the collectorship in which the lands in question may be situated nor in any other collectorship, the notice shall be served upon his agent or representative in charge of the lands.

Fifth. Provided always that if any party or his agent in charge of his land, on whom a notice may be served in the manner above prescribed shall refuse to acknowledge the receipt of it when required by the person serving it, the tender of the notice to such party or his agent shall be taken for a sufficient service; such tender to be proved by the evidence of two persons residing on the lands or in the nearest village.

Sixth. The collector shall in the notice summoning the party, warn him that if he withhold any writings of the nature specified in the second clause of this section within the period prescribed they will not afterwards be received unless he shall show good and sufficient cause for not producing them and shall assign such cause on his appearing before him.

6. *First.* If the holder of such lands to whom a notice may have been issued as directed in the preceding section shall abscond or is not after diligent search to be found or shall shut himself up in any house or building or retire to any place so that the notice cannot be served upon him, the collector or other officer exercising the power of collector on receiving the Nazir's return to this

effect shall issue a proclamation to be affixed in some conspicuous part of his kachari.

The proclamation shall be written in the Persian and Bengali languages in the provinces of Bengal and Orissa (including Katak) and in the Hindustani languages and Nagri character in Behar, Benares and in the Ceded and Conquered provinces; and it shall contain a copy of the former notice and a further notification to the party, that if he shall not appear on a day to be fixed (which shall not be less than fifteen days from the time that the proclamation may be fixed up) the collector will proceed without further notice to hold the enquiry *ex-parte*.

The collector or other officer exercising the power of collector shall likewise order a copy of the proclamation and notice to be fixed up with all practicable despatch on the outer door of the house in which the holder of the lands may have usually dwelt or in some conspicuous place in the chief village within or in the neighbourhood of the lands proposed to be assessed.

Second. The nazir shall return the order with an endorsement stating at what times and places the proclamation may have been fixed up.

The return of the nazir shall be filed with the collector's proceedings in the case.

If the party shall not appear at the time limited in the proclamation, or if a party who may have been served with a notice shall not appear within the time therein limited, or if having appeared, he shall refuse to give answer, the collector shall proceed to investigate and decide upon the case in the same manner as if the party has appeared, answered and entered into proof.

7. In cases of land supposed to be liable to assessment under the provisions of section 3 of this Regulation, the collector or other officer exercising the powers of collector shall institute a full and particular enquiry into the circumstances and condition of the land in question at the period of the decennial settlement; and, in cases of alluvion land, into the period of its formation.

8. When an enquiry in regard to land of the nature of that described in the foregoing section shall have been authorized it shall be competent to the collector with the sanction of the Board of Revenue or other authority exercising the powers of that Board previously obtained, to cause a survey or measurement to be made of all such lands and of the estate to which such lands may be alleged to belong.

9. If shall likewise be competent to the collector in all cases of enquiry held under the provisions of the Regulation to summon the patwari, gomasta or other person by whom the accounts relating to the lands proposed to be assessed or to the estate to which the lands may be alleged to belong are kept, and to require him to produce all accounts relating to such lands or estate, and to examine him on oath to the truth of such accounts or regarding such lands or estate in the manner specified in section 22, Regulation XII of 1817.

10. It shall be further competent to the collector in such case with the sanction of the Board of Revenue or other authority exercising the powers of that Board to require the person claiming to be proprietor or farmer of the lands proposed to be assessed or of the estates to which they are alleged to belong to attend either in person or by representative, and to produce all the accounts relating to such lands or estate within a reasonable period, not being less than one week.

11. Whenever the collector or person exercising the powers of collector shall require the attendance of any proprietor or farmer or of any patwari or gomasta or other officer for the purpose stated in the above section, he is to serve such proprietor or other person as aforesaid with a written notice under his

official seal and signature stating the purpose for which his attendance is required, the papers (if any) which he is to bring with him and the period within which he is to attend.

Second. [Repealed by Act No. XII of 1876.]

12. If any patwari, gomastha or other person by whom the accounts of lands are kept and who may be summoned by a collector or commissioner under the provisions contained in sections 9 and 11 of this Regulation shall neglect or omit to produce his original accounts on the requisition of the collector or commissioner, or to give his evidence regarding them, or shall intentionally and deliberately give a false deposition on oath before the collector or commissioner when summoned and examined as aforesaid, or shall alter, fabricate, falsify or mutilate the accounts relating to such lands or to the estate to which such lands are stated to belong, he shall be and be held liable to the pains and penalties specified in sections 23 and 27 of Regulation XII of 1817 according as the provisions of one or other of those sections may be applicable to the offence committed by him.

13. *First.* If the holder of any lands in regard to which the collector shall have been authorized by the Board of Revenue or other authority exercising the powers of that Board to institute the enquiry described by section 7 of this Regulation shall refuse or neglect to furnish the accounts relating to such lands within the period specified in the collector's requisition, the Board of Revenue or other authority exercising the powers of that Board shall be competent to direct the lands to be immediately attached, and the rents collected on account of Government in the same manner as if the lands were the property of Government.

In such cases, however, it shall still be the duty of the collector to make a full inquiry into the title of the holder of the lands and to transmit his proceedings to the Board who will decide whether the lands shall be deemed permanently liable to assessment.

Second. Provided further that if the holder of any lands assessed under the rules of the Regulation shall institute a suit in Court to contest the decision of the Revenue authorities, and shall produce any accounts or documents besides such as he may have delivered to the collector, the accounts or documents so produced shall not be received by the Court in evidence, nor shall they have any weight in the decision any more than if they had never existed, unless he shall show good cause to the satisfaction of the Court for not having produced the said accounts or documents, and shall prove that he assigned such case in answer to the collector's requisition, or show good cause for not having done so.

Third. Provided also that if any proprietor or farmer shall omit or refuse to attend, or to cause his officer or agent to attend when duly summoned by the collector or commissioner by the time prescribed in the notice issued by the collector or commissioner, or shall omit or refuse to furnish the account or documents required and to show sufficient cause for such omission, the Board of Revenue or other authority exercising the powers of that Board are authorized and empowered to impose upon him such daily fine to be payable daily until he complies with the collector's requisition as they may think adequate to his situation and circumstances in life reporting, however, the account for the information of the Governor-General in Council.

The fine when confirmed by Government is to be levied by the same process as is prescribed for the recovery of arrears of revenue.

14. If any zemindar or other person shall resist or cause to be resisted the attachment or measurement of lands which the Board of Revenue or other authority exercising the powers of that Board shall have authorized the collector or commissioner to attach or measure under the provisions of the Regulations or shall resist or cause to be resisted any process duly issued by the collector or

commissioner to compel a patwari, gomastha or other officer to produce his accounts and to give his evidence respecting them under the provisions contained in section 9 of the Regulation, it shall be competent to the Board of Revenue or other authority exercising the powers of that Board on being satisfied that he is guilty of the charge to adjudge the zemindar or other person so offending to pay such fine to Government as may appear to it proper upon a consideration of his situation and circumstances in life and of the offence which may have been committed and to levy the fine in the mode prescribed for the recovery of arrears of revenue;

Provided, however, that if the fine shall exceed five hundred rupees, the Board shall submit a report of the case to the Governor-General in Council and shall not proceed to levy the fine until they receive authority from Government for that purpose.

15. When the party whose lands it may be proposed to assess shall appear in conformity with the notice or summons, and shall deliver up his title-deeds the collector shall give a receipt for them and after duly examining them shall deliver to the party a statement of the grounds on which his land may appear liable to assessment with copies on plain paper of all documents on which his opinion may be founded.

The collector shall then desire the party to deliver a written answer within seven days.

16. It shall be the duty of the collector or other officer exercising the powers of collector carefully to number, mark, date, and sign all documents produced by a zemindar or other person in possession of the lands proposed to be assessed in support of his claim to hold them free of assessment or as parcel of an estate for which a permanent settlement shall have been concluded and to insert in his proceedings the title and number of such documents so that no doubt may exist in regard to their having been exhibited before him.

And the collector shall before proceeding to judgment, warn the party that no accounts or other documentary evidence of any kind which he shall not produce before him, and for not producing which he may not assign good and sufficient cause will be received at any future period either by the revenue or judicial authorities, and shall record his having done so on the face of his proceedings.

17. On receiving the answer of the party the collector shall summon any witnesses he may deem necessary to support the claim of Government with any which the party may desire to have summoned on his behalf, and shall take their deposition in judicial form and in the presence of the party or his authorized agent.

18. The collector shall carefully examine all documents that may be produced by the party, and shall likewise give the party access to inspect all documents on which he may rely in proof of the liability of the land to assessment.

19. First. The collectors and other officers exercising the powers of collectors are hereby authorized to summon witnesses and administer oath or cause the execution of solemn declarations in lieu thereof in all cases brought before them under this Regulation.

Second. [Repealed by Act No. XII of 1873.]

Third. [Repealed by Act No. XII of 1876.]

20. Having closed his proceedings the collector shall record his opinion in the rubakari detailing the grounds on which it is founded, and whether the lands appear liable to assessment or otherwise, and shall forward his proceedings to the Board of Revenue or other authority exercising the powers of that Board in such mode as may be directed by that authority furnishing the party at the same time

with a copy on plain paper of the final rubakari aforesaid and reporting his having done so to the Board or other authority aforesaid.

21. *First.* The Board of Revenue or other authority aforesaid after calling for any further evidence which on a consideration of the collector's proceedings they may deem wanting shall on a day to be fixed by a public notice affixed in the office not being less than six weeks from the date on which the collector may have furnished the party with a copy of his final rubakari and after hearing any thing which the party, if in attendance, may wish to urge in his own behalf proceed to pass judgment in the case and shall record their opinion in the rubakari delivering a copy thereof to the party on his requisition to that effect.

Second. The final rubakaris which the collectors and the Boards are by the provisions of this section directed, to record shall contain a distinct statement of the subject-matter of the case, the grounds on which the decision may be given, the names of the witnesses whose depositions may have been taken and the title of every exhibit read.

Third. If the Board of Revenue or other authority aforesaid pronounce against the assessment, the proceedings shall be considered final, except on proof in a court of judicature of fraud or collusion in the previous inquiry.

Fourth. In the event of the Board's declaring the lands liable to assessment, the collector shall inform the party or his vakil of the decision of the Board and shall fix an assessment on the principles of the general Regulations on such information as may be procurable.

22. *First.* If the party shall within a fortnight of his receiving intimation of the Board's decision tender to the collector responsible security for the payment from that date of the jama which may eventually be fixed on the land with interest at the rate of twelve per cent. and shall engage to institute a suit in the court in which the case may be cognizable within ten days commencing from the date of the deed of security or (if the court shall be shut and shall not be opened until after the expiration of such ten days) within three days calculating from the day on which it may be opened to try the justness of the demand, the collector shall leave the party in possession as before reporting the circumstance for the information of the Board.

Provided, however, that in such cases the party shall produce all his accounts of collections for the information of the collector in estimating the amount of the security to be required.

Second. If the party be willing to give security for a portion only of the jama eventually assessable on the land, it shall be competent to him to do so on the condition above specified.

In this case the collector shall under the orders of the Board either hold the lands khas or farm them for such period as the Board may direct and shall pay to the party a portion of the collections proportionate to the amount for which he may be willing and able to give responsible security.

Third. It shall be competent to the court to direct the collector to take the security offered by the party if he shall refuse to do so, and the court shall be satisfied that it is sufficient, but it shall rest with the collector subject to the directions of the Board, to fix the amount for which the surety is to be held bound.

Fourth. The amount shall not in the first instance exceed the estimated annual revenue assessable on the lands, or the amount receivable by the party in one year with interest; but if, at the expiration of one year from the date on which the party may receive intimation of the Board's decision the suit shall still be pending it shall be competent to the collector to require additional security for the same amount.

Fifth. In mukurraris the parties giving security and intending to sue shall continue to pay the mukurrari jama, and will be required to give security for the remaining revenue which may be eventually demandable from them.

23. If the party do not give security or having given security neglect to sue, the collector shall proceed to the final assessment of the land.

24. *First.* Persons whose lands may be assessed either in future to give security or to institute a suit within the prescribed time shall nevertheless be entitled to sue any time within one year from the date of their being informed of the Board's decision, but after the above period shall have elapsed the decision of the Board shall be final and conclusive.

Provided, however, that in cases in which the party may be able to show good and sufficient cause for not having sued within the said period, such as minority or absence, no limitation as to time shall prevail other than that generally prescribed by the existing Regulations in regard to private claims.

Second. [Repealed by Act No. XVI of 1874.]

25. [Repealed by Act No. XVI of 1874.]

26. *First.* In cases instituted in the zillah Court an appeal shall be received by the Court of the Sadar Dewani Adawlut.

Second. The Sadar Dewani Adawlut in all cases of appeal being prepared in conformity with the provisions of this Regulation shall, together with the decree against which such appeal may be lodged, likewise pursue the final rubakari filed in the case by the Board of Revenue or other authority exercising the powers of that Board; and, if on a consideration of those documents, the decision of the Court should appear unjust or erroneous or doubtful, or its proceedings in the case manifestly irregular or imperfect; or if from the nature of the cause as stated in the decree or otherwise, it shall appear to them of sufficient importance to merit a further investigation in appeal they shall admit a special appeal.

27. [Repealed by Act No. XVI of 1874.]

28. *First.* On the production of any written document purporting to be a farman of any king of Delhi or to be a sanad, parwana, or other grant of any wazir or of any nawab, raja, or other potentate, or person formerly exercising authority in any part of the provinces and territories now subject to the British Government, it shall be the duty of the Revenue and Judicial authorities before whom such document may be produced to ascertain the validity and authenticity of it by reference to such witnesses as may be likely to lead to the due appreciation thereof, and the said authorities shall not receive such document in evidence merely on the credit of the seal or other attestations impressed upon it without some external evidence in corroboration of its authenticity.

Second. Provided, also, that no document of the above description which may be produced to any court or adawlat shall be received, nor any proceedings held thereon, nor any faith given thereto, unless it shall be proved that the said document has been duly registered under the rules and requisitions of Regulations XIX and XXXVII of 1793; XLI and XLII of 1795; VII of 1800; XXXI and XXXVI of 1803; and VII of 1808; or unless due cause be shown for the non-registry.

29. Whenever a collector or other officer exercising the powers of collector shall have reason to suspect the validity of the original tenure under which any land subsequently commuted for a money pension of the description noticed in Regulation XXIV of 1803 and Regulation VI of 1817 was held it shall be competent to him with the previous sanction of the Board of Revenue or other authority exercising the powers of that Board, to proceed in the investigation of the tenure under which such land was held, in the same manner as collectors are authorized by this Regulation to proceed in regard to the tenure of lands now held free of

assessment, and if the Board shall be of opinion that the tenure was invalid, it shall be competent to them to resume the money pension granted in consideration thereof, subject to an appeal to the Courts of Judicature in the manner prescribed by this Regulation in cases in which the Board may direct the assessment of land held free of assessment.

Provided, however, that it shall not be competent to the Revenue authorities to resume any money pension of the above description of which the incumbent may have been in the enjoyment under orders of the Governor-General in Council for a period of twelve years or more.

30. [*Repealed by Bengal Act No. VII of 1862.*]

This section was repealed by Act VII (B. C.) of 1862 which transfers suits for resumption to the Civil Courts.

31. *First.* Nothing in the present Regulation shall be considered to affect the right of the proprietors of estates for which a permanent settlement has been concluded to the full benefit of waste lands included within the ascertained boundaries of such estates respectively at the period of the decennial settlement and which have since been or may hereafter be reduced to cultivation. The exclusive advantages resulting from the improvement of all such lands were guaranteed to the proprietors by the conditions of that settlement, and it being left to the Courts of Judicature to decide on all contested cases whether lands assessed under the provisions of this Regulation were included at the period of the decennial settlement within the limits of estates for which a settlement has been concluded in perpetuity and to reserve the decision of the Revenue authorities in any case in which it shall appear that lands which actually formed at the period in question a component part of such an estate have been unjustly subjected to assessment under the provisions of this Regulation, the zemindars and other proprietors of land will be enabled by an application to the Courts to obtain immediate redress in any case in which the Revenue authorities shall violate or encroach on the rights secured to them by the permanent settlement.

Second. It is further hereby declared and enacted that all claims by the Revenue authorities on behalf of Government to additional revenue from lands, which were at the period of the Decennial Settlement included within the limits of estates for which a Permanent Settlement has been concluded, whether on the plea of error or fraud, or on any pretext whatever saving of course the case of lands expressly excluded from the operation of the settlement, such as lakhiraj and thanadari lands shall be, and be considered wholly illegal and invalid.

A. D. 1825. REGULATION XIII.

A Regulation to maintain the settlement made for certain lands held exempt from the payment of revenue by canoongoes, in the province of Behar; and to provide for the future settlement of such lands, as well as of the lands composing other resumed lakheraj tenures, with the present occupants, when so directed by Government.

Whereas it was enacted by section 5, Regulation II, of 1816,*† that the revenue of lands held by canoongoes, generally in the province of Behar, in virtue of their offices, should be liable to resumption; and accordingly under that law,

* Declared to apply to the whole of the Lower Provinces except Scheduled Districts, Act XV of 1174.

† Repealed by Act VIII of 1863.

various resumptions of lands so held took place, and the parties to whom the *zemindaree* interest in the same appeared to belong, were admitted to engage for the Government revenue; but on the consideration of the proceedings held under the provisions of the above rule, it appeared to the Governor-General in Council to be improper wholly to deprive the *canoongoes*, or their representatives, of the advantages derived from such lands, and enjoyed by them for a long course of years; and it was accordingly resolved by Government, on the 14th February 1822, that, in cases where the lands had been occupied and managed by the *canoongoes*, or their representatives, and the rents received by them, they should be replaced in possession of such lands, and a settlement made with them on the principle prescribed by clause second, section 8, Regulation XIX of 1793, *viz*, the revenue to be paid to Government to be equal to one-half of the annual produce (or rental) of the lands, calculated according to the rates at which other lands in the *pergunnah* of a similar description may be assessed, securing to the proprietors of the soil such *malikanah* or other allowance, as they might have received prior to the resumption of the official *minhye* tenure: and whereas the existing laws relative to the settlement of resumed *lakheraj* tenures, are not properly applicable to the case, and it appears to be expedient expressly to provide for the maintenance, by the courts of judicature, of the arrangement above described, in order that the *canoongoe minhyedars* may be secured in the possession (subject to the quit-rent fixed by Government) of the land, rents, and produce, heretofore possessed by them: and whereas it is desirable to provide for the settlement, on the same principle, of any lands that may be resumed under the corresponding rules relating to *canoongoes*, and their official tenures, in other parts of the country: and whereas it appears to be generally expedient to make a distinct provision for securing to the holders of *lakheraj* lands, resumed by the officers of Government, and assessed on the principle prescribed in clause second, section 8, Regulation XIX of 1793, the benefits which that law was designed to bestow; and to declare the competency of Government in other cases to continue the persons, who have heretofore occupied lands free of assessment, or their representatives, in the possession of the same, notwithstanding such lands being made subject to assessment; the following rules have been enacted for these purposes respectively, to be in force throughout the territories subject to the presidency of Fort William, from the date of the promulgation of this Regulation.

2. In cases of *lakheraj* tenures resumed under the provisions of Regulation IV of 1808,* Regulations II and V of 1816, or any other regulation in force, relative to lands held by *canoongoes* by virtue of their offices, where the *minhye* or *lakheraj* tenure, and the right of property in the land, are vested in distinct parties, it shall be competent to the Governor-General in Council, by instruction to the Revenue Board, or other authority empowered to make the resumption, to continue the *minhyedars* and their heirs, in possession and management of such lands, subject to such assessment as he shall judge it proper to direct: and the parties claiming the *zemindaree* interest, or other proprietary right in such *mahals*, shall not be entitled to any land rent, produce, or profit beyond what they may have enjoyed up to the period of the resumption of the tenure, or would have been entitled to receive, in the event of Government having confirmed the same in perpetuity, free of assessment. Persons consequently claiming to be *maliks* of the said lands, who, during the continuance of the *lakheraj* tenure, had not possession of the same, whether they received a *malikanah* allowance, or otherwise, shall not disturb the possession of the *minhyedars*, or their heirs and representatives, in any case wherein the Governor-General in Council may have sanctioned such

* Repealed by Act XIX of 1872.

possession; and any suit preferred by such persons in a court of judicature, to recover possession, contrary to the intent and meaning of this rule, shall be dismissed with costs. Provided, however, that in all cases of the nature above-mentioned, wherein the *zemindar* or other proprietor of the land may have received *malikanah* or proprietary due, during the existence of the *lakheraj* tenure, he shall continue to receive the same, notwithstanding the resumption of the *lakheraj*, in like manner as if such resumption had not taken place.

3. The tenures of the *mithyedar*s which have been confirmed to them, with the sanction of Government, by the arrangement referred to in the preamble of this Regulation, or which may be so confirmed, in conformity with the preceding section, are declared to be hereditary and transferable: but should they escheat to Government, the parties possessing a *zemindaree* interest or other proprietary right in the lands, will be admitted to engage for the revenue, subject to a fresh assessment, to be adjusted on the actual assets under the general Regulations.

4. The principles of sections 2 and 3 of this Regulation shall be considered applicable to all cases of *lakheraj* resumption under the general Regulations in force, which may come within the favourable rule of assessment contained in the second clause of section 8, Regulation XIX, 1793, in the provinces of Bengal, Behar, and Orissa, or the second clause of section 8, Regulation XLI, 1795, in the province of Benares; it being the evident intention of the rule in question, that it should be applied to persons who had been long in possession of the *lakheraj* tenures made subject to assessment by the regulations above cited; and whom it appeared equitable, in consideration of their long possession, to leave in occupancy of the lands composing their respective tenures, at a moderate assessment, not exceeding a moiety of the annual rent produce.

5. In modification of the existing rules contained in Regulations XXXVII, 1793, XLII, 1795,* and XXXVI, 1803,† or any other Regulation in force, relative to the settlement of resumed *jaghire*, *altungah*, *muddulnaash*, *ayma*, and other grants of land termed *badshahee*, or royal; and generally in qualification and explanation of all the rules in force relative to the resumption of *lakheraj* tenures and the future assessment of lands composing the same; it is hereby further declared, that whenever such tenures may be pronounced invalid or extinct, by a Revenue Board, or other authority empowered to investigate the *lakheraj* title in such tenures, under the provisions of Regulation II, 1819, or of any other regulation in force, it shall be competent to the Governor-General in Council, on a special report of the circumstances of the case, when it may appear just and proper, in consideration of the long possession of the actual occupant of the land or of his ancestors, to direct his continuance in possession, though not the *zemindar*, *talookdar*, or other *malik* of the land, on his engaging for the future assessment, on such terms as may be prescribed by Government; and in such cases the whole of the provisions contained in sections 2 and 3 of this regulation, shall be deemed applicable, and be maintained by the Courts of Judicature accordingly.

Repealed by Act XIX of 1873.

† Repealed by Act VII of 1868.

A. D. 1825 REGULATION XIV.

A Regulation to declare the extent of the authority possessed by the revenue authorities, subordinate to the Governor-General in Council, in the confirmation of lakheraj tenures; to define the principles to be followed in determining on the force and validity of grants, made by persons exercising authority in different quarters previously to the acquisition of the country by the British Government; and to provide for the application of the general laws and Regulations respecting lands held free of assessment, to the territory ceded by Govind Rao to the British Government, and annexed to the Zillah Bundelcund, under the provisions of Regulation II of 1818.

Whereas doubts have arisen as to the extent of the authority possessed by the revenue authorities subordinate to the Governor-General in Council, in regard to the confirmation of *lakheraj* tenures, which it is expedient to remove; and it is also desirable further to define the principles to be followed in determining on the force and validity of grants made by persons exercising authority in different quarters, previously to the acquisition of the country by the British Government; and it is necessary to make provision for the due application of the general rules in force, relative to *lakheraj* tenures, to the territory ceded by Govind Rao to the Government, and annexed to the *zillah* of Bundelcund under the provisions of Regulation II, 1818* and whereas it is enacted by clause first, section 26, Regulation II, 1819, that in suits instituted in the *zillah* courts to contest the decisions passed by the Revenue Boards, under the provisions of that regulation, a special appeal only shall lie to the provincial courts, and that in like manner, in cases decided in the first instance by a provincial court, excepting cases ultimately appealable to the King in Council, an appeal shall be received by the *Sudder Dewanny Adawlut* on special grounds only; and it appears to be expedient that the above restriction should not apply to cases wherein the decision of the court may be opposed to the judgment of the Board of Revenue, or other authority exercising the powers of that Board, but that such cases should be open to a regular appeal; the following rules have been enacted, in addition to, and in modification of, the provisions of Regulations XIX and XXXVII, 1793, Regulations XLI and XLII, 1795, Regulations XXXI† and XXXVI, 1803,‡ of such parts of Regulations VIII§ and XII, 1805, as refer to *lakheraj* lands, and of Regulation II, 1819; to be in force, from the date of their promulgation, throughout the provinces immediately subject to the presidency of Fort William.

2. It is hereby declared and enacted that the power of granting *lakheraj* tenures, viz. tenures of land exempt from the public assessment, either for life, or in perpetuity, as well as of confirming such tenures, excepting by a regular judgment passed after a judicial inquiry, belongs and always has belonged exclusively to the supreme Government; and no act, order, or decision, granting or confirming any tenure as aforesaid, within any of the territories subordinate to this presidency, after the annexation of such territories to the British dominions, shall be held valid, unless the same shall have been done, issued, or passed, by or under the immediate directions of the Governor-General in Council, or by some officer expressly authorized by Government to grant or confirm such tenures, or with respect to the confirmation of grants duly authorized, by some competent court of

* Repealed by Act XIX of 1873.

† Declared to apply to the whole of the Lower Provinces, except the Scheduled Districts, Act XV of 1874.

‡ Repealed by Act XV of 1874.

§ Repealed by Act XIX of 1873.

judicature in a suit regularly tried and decided by it; or by one of the Revenue Boards acting in a judicial capacity, under the rules of Regulation VIII, 1811,* whilst that regulation (rescinded by section 2, of Regulation II, 1819) was in force; and subsequently under the rules of Regulation II, 1819, or any other regulation expressly empowering the Revenue Boards, after full investigation of claims to exemption from assessment under the general rules applicable to *lakheraj* tenures, to pronounce a decision against the assessment, to be considered final, except on proof, in a court of judicature of fraud or collusion in the previous inquiry. Provided also, that no resolution or order passed by the Lieutenant-Governor, and the Board of Commissioners in the ceded and conquered provinces, the Board of Revenue, or other authority exercising the powers of the Board, whereby the right of Government to assess any *lakheraj* lands may have been relinquished, or postponed, save and except decisions regularly passed according to the rules above cited, shall operate to the prejudice of Government, or be held to bar the revenue authorities from proceeding for the recovery of the public dues under the provisions of Regulation II, 1819, or any other rules in force, relative to the resumption of *lakheraj* tenures, held under invalid grants.

3. *First.* The following principles are to be observed, in determining the force and validity of grants made by persons exercising authority in the provinces subordinate to this presidency, previously to the acquisition of the country by the British Government.

Second. *Lakheraj* tenures, of which uninterrupted possession shall have been held exempt from assessment at and subsequently to the periods undermentioned, shall be and be considered to be valid, without evidence to any formal grant or confirmation of the same; and shall be continued to heirs in cases in which it may be clearly shown, from the nature and denomination of the tenure, that it is hereditary according to the ancient usage of the country; viz. the 12th August 1765, if the tenure be in Bengal, Behar, or Orissa, (excepting Cuttack); the 14th October 1791, if the tenure be in Cuttack, including Puttaspore or its dependencies; the 1st July 1775, if the tenure be in the province of Begares; the 10th November 1789, if the tenure be in the provinces ceded by the Nawab Vizier in November 1801; the 1st January 1792, if in any of the provinces ceded by Dowlut Rao Scindia and the Peishwa under the treaties of the 16th and 30th December 1803; the 1st November 1805, if in the *pergunnah* of Khandah or other territory ceded by Nana Govind Rao on the 1st November 1817.* Provided, however, that the above rule shall not apply to cases of derivative tenures, wherein it may appear that the tenure is derived from a *jaghirdar* or other person, who at any of the periods above specified held lands free of assessment under a temporary or conditional tenure. In all such cases, the parcels of the land so held shall follow the condition of the principal tenure; and if that be resumable, will consequently be liable to resumption.

Third. The proof of possession in the cases provided for by the preceding clause, and (in the case of persons not the original grantees) of the hereditary nature of the tenure, shall be on the parties claiming to hold or recover the *lakheraj* tenure: the general principle being that the ruling power is entitled to a certain proportion of the produce of every *beegha* of land, excepting so far as it shall have transferred, relinquished, or compounded its right thereto; and all parties claiming the benefit of such exceptions being bound to establish their respective claims and titles.

Fourth. Provided also, that although one or more successions of any tenure as aforesaid may have taken place before the periods specified in the second clause,

* Repealed by Reg. II of 1819.

the fact shall not be taken to establish a title of inheritance, unless the tenure be clearly of an hereditary nature; or unless the right of inheritance therein shall have been admitted by the Governor-General in Council, on a reference made to Government according to the rules in force applicable to such cases.

Fifth. The courts of judicature and revenue authorities shall not recognise any potentate or person, as having been vested with the supreme power within any part of the province subordinate to this presidency, save and except the kings of Delhi, the *soobadars* of Bengal, Behar, and Orissa, and the several authorities specified in Regulation XLII, 1795, Regulation XXXVI, 1803, and Regulations VIII* and XII 1805; and with respect to the territory ceded by Nana Govind Rao, save and except Raja Chuttersaul, and his predecessor, previously to the Mahratta conquest of that territory in the year 1802 of the Sumbut era (corresponding with 1730 of Christian era); and subsequently thereto His Highness the Peishwa, who then obtained the supreme authority in the territory referred to. If in any case grants shall be produced, purporting to have been made or confirmed by any other person than as aforesaid, alleged to have been vested with the supreme power for the time being, and it shall appear to the court or other authority investigating the same, that the plea is well founded, the court or other authority before whom the case may be depending, shall, before passing any decision thereupon, refer the point to the Governor-General in Council, and be guided by his determination.

Sixth. To the validity of grants made or confirmed by the kings of Delhi, or by any of the rules aforesaid, it is and shall be held to be necessary;

1st. That they were made or confirmed within the period, during which the person granting or confirming the same possessed and exercised supreme power within the territory in which the lands specified in the grant are situate.

2d. That the grantee actually and *bond fide* obtained possession of the land granted within the said period.

3rd. That the grant was not subsequently resumed by the officers or the orders of the Government for the time being, previously to the acquisition of the country by the British Government, or, if so resumed, that the competence of the officers to resume shall have been expressly disallowed by the Governor-General in Council.

Seventh. The following shall be held, for the purposes specified in this Regulation, to be the periods at which the several provinces subordinate to this presidency were acquired by the British Government, *viz.*, for Bengal, Behar, and Orissa, (excepting Cuttack,) the 12th August 1765: for Benares the 1st July 1775; for the provinces ceded by the Nawab Vizier the 1st January 1801; for the provinces ceded by Dowlut Rao Scindia and the Poishwa the 1st January 1803; for the province of Cuttack, Puttaspore, and its dependencies the 14th October 1803; for the *pergunnah* Khandah and the other territory ceded by Nana Govind Rao, 1st November 1817.

Eighth. To the validity of grants not made or confirmed by the supreme power, (excepting tenures of long possession, described in the second clause of this section,) it shall be held to be necessary;

1st. That they were made or confirmed by some authority which the Governor-General in Council shall have expressly declared competent to make or confirm the same.

2nd. That the grantee actually and *bond fide* obtained possession of the land granted; and that the revenue of the land was not subsequently resumed by competent authority.

Ninth. Provided also that in cases in which any *lakheraj* tenures may have

been resumed previously to the acquisition of the country by the British Government, the determination of the question, whether the officer, by whom, or by whose order the resumption may have been made, was legally competent to do so, shall in all cases, wherein it may be necessary to determine this question, rest with the Governor-General in Council. Moreover, all questions touching the validity of grants made or confirmed by any officer subordinate to the supreme power, or the legal effect of resumption by any such officer, which may not have been expressly provided for by the regulations and which may be material to the decision of any suit or inquiry, shall be referred by the courts of judicature, or other authorities making the investigation, to the Governor-General in Council for determination; unless the powers and competence of the officer in question shall have been previously determined by Government.

4. Nothing in this regulation shall be construed to affect the provisions contained in Regulation XIX, 1793, Regulation XLII, 1795,* Regulation XXXI, 1803,† and Regulation XII, 1805, relative to lands, not exceeding 10 *beeghas*, of which the produce is *bonâ fide* appropriated to religious or charitable uses.

5. [Repealed by Act XII of 1873].

6. In modification of the rules contained in section 26, Regulation II, 1819, it is hereby enacted, that in cases wherein a *zillah* court shall annul or alter a judgment passed by the Board of Revenue, or other authority exercising the powers of that Board, under the provisions of the above-mentioned regulation, a regular appeal shall lie to the provincial court. In like manner, in cases tried in the first instance by a provincial court, if the decision of that court shall reverse or alter the judgment of the Board of Revenue or other authority aforesaid, a regular appeal shall lie to the Court of Sudder Dewanny Adawlut, although the amount in contest shall be less than five thousand pounds sterling. The provisions of the above-mentioned section shall, however, still be applicable to cases in which the *zillah* or provincial courts may maintain the decisions of the Revenue Boards, or authorities exercising the powers of these Boards.

ACT No. V of 1859.

Received the Governor-General's assent on the 4th of March 1859.

An Act to empower the holders of *ghatwali*-lands in the district of Birbhum to grant leases extending beyond the period of their own possession.

Whereas it has been held that the *ghatwals* of the district of Birbhum who pay the revenue of their lands directly to Government under the provisions of Regulation XXIX, 1814, of the Bengal Code have not the power of alienating their lands: and whereas, for the development of the mineral resources of the country in which the said *ghatwali*-lands are situate, and for the improvement of the said lands, it is expedient that the power of granting leases for periods not limited by the term of their own possession, should in certain cases be extended to the possessors of such lands; It is enacted as follows:—

1. *Ghatwals* holding lands in the district of Birbhum under the provisions of the aforesaid Regulation, shall have the same power of granting leases for any period which they may deem most conducive to the improvement of their tenures, as is allowed by law to the proprietors of other lands.

Provided that no lease of *ghatwali*-lands for any period extending beyond the

* Repealed by Act XIX of 1873.

† See Reg. III of 1828, S. 10, cl. 4.

lifetime or incumbency of the grantor of the lease shall be valid and binding on the successors of the grantor, unless the same shall be granted for the working of mines or for the clearing of jungle, or for the erection of dwelling-houses or manufactories, or for tanks, canals and similar works; and shall be approved by the Commissioner of the division, such approval being certified by an endorsement on the lease under the signature of the Commissioner.

2. If any of the said ghatwali lands be at any time under the superintendence of the Court of Wards, or otherwise subject to the direct control of the officers of Government, it shall be lawful for the Court of Wards or the Commissioner to grant leases for any such purpose as aforesaid; and every lease so granted shall be valid and binding on all future possessors of the said lands, anything in the existing law to the contrary notwithstanding.

PART VI.

REVENUE SALES.

**ACT XI OF 1859 (AS AMENDED BY ACT VII B. C. OF 1876;
ACT XII OF 1841.; ACT III (B. C.) OF 1862.)**

N. B. Please see clause c. of section 195 of the Bengal Tenancy Act.

ACT No. XI of 1859.

*An Act to improve the law relating to sales of Land for arrears of Revenue in the Lower Provinces under the Bengal Presidency.**

Whereas it is expedient to discontinue the practice of obtaining the previous sanction of the Board of Revenue to sales of estates for arrears of Revenue, or other demands of Government, in the province of Cuttack: and whereas it is just that a person having a lien upon the estate, and paying the money necessary to protect it from sale for arrears of revenue, should be reasonably secured: and whereas it is expedient to afford sharers in estates, who duly pay their shares of the sudder jumma of their estates, easy means of protecting their shares from sale by reason of the default of their co-sharers: and whereas it is expedient to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents: and whereas it is expedient to provide for the voluntary registration of dependent talooks existing at the time of settlement: and whereas it is expedient to protect the holders of registered under-tenures created since the settlement, and not resumable by the grantors or their representatives, from loss by the avoidance of their tenures on the occasion of a sale of the superior estate for arrears of public revenue, when the arrears can be realized by such sale: and to give absolute security to such tenures by special registry, when shown to be held at rents sufficient for the security of the revenue: and it is therefore proper, for the above and other purposes, to improve the law relating to sales of land for arrears of revenue in the Provinces of Bengal, Behar, and Orissa; It is enacted as follows:—

1. [*Repealed by Act XIV of 1870.*]

2. If the whole or a portion of a kist or instalment of any month of the era according to which the settlement and kistbundee of any mehal have been regulated, be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

3. Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder. And the said Board shall give notice of the dates so fixed in the Official Gazette, and shall direct corresponding publication to be made, as far as regards each district in the language of that district, in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate (or Joint-Magistrate as the case may be), and Moonsiffs, and at every thannah station of that district; and the dates so fixed shall not be changed except by the said Board by advertisement and notification, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

4. Provided that in the District of Sylhet, the Collector may be authorized by the Board of Revenue to proceed in the first instance by the distress and sale of the personal property of defaulters, instead of by the sale of their estates.

* Declared to apply to the whole of the Lower Provinces, except the Scheduled Districts, by Act IV of 1874.

5. Provided always that no estate, and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification in the language of the District specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of this Act, in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Moonsiff's Court and Police Thannah of the Division in which the estate or share of an estate to which the notification relates, is situated; or if the estate or share of an estate be situated within the jurisdiction of more than one Moonsiff's Court or Police Thannah, in some one or more of such Courts or Thannahs; and also at the Cutcherry of the malgoozar or owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose.

First. Arrears other than those of the current year, or of the year immediately preceding.

Secondly. Arrears due on account of estates other than that to be sold.

Thirdly. Arrears of estates under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

Fourthly. Arrears due on account of tuccavee, poolbundee, or other demands not being land revenue, but recoverable by the same process as arrears of land revenue.

6. The Collector or other officer duly authorized to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in section 3 of this Act, issue notifications in the language of the District, to be affixed in his own office and in the Court of the Judge of the District, specifying the estates or share of estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than thirty clear days from the date of affixing the notification in the office of the Collector or other officer as aforesaid. And if the Government revenue of any estate or share of an estate to be sold, exceed the sum of five hundred rupees, a notification of the sale of such estate or share of an estate shall be published in the Official Gazette. Except as hereinafter provided, all estates or shares of estates so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector or other officer as aforesaid, and shall be sold to the highest bidder. And no payment or tender of payment, made after sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.

7. Whenever an estate or share of an estate is notified for sale as provided by section 6 of this Act, the Collector or other officer as aforesaid shall affix a proclamation in the language of the District, in his own office, and as soon thereafter as may be in the Moonsiff's Courts and Police Thannahs within which the estate or share of an estate, or any part of it, is situated, and also at the Cutcherry of the malgoozar or the owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, forbidding the raiyats and under-tenants to pay to the defaulting proprietor, any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchase for any sums so paid.

* See Act VII of 1868, s. 9.

8. No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever, held or supposed to be held by any defaulter against Government, shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter, and sufficient to pay the arrear of revenue due, was in the Collector's hands, bar or render void or voidable a sale under this Act, unless such money stands in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in section 15 of this Act, the Collector shall have neglected, or refused on insufficient grounds to transfer it in payment of the arrear of revenue due.

9. The Collector or other officer as aforesaid shall, at any time before sunset of the latest day of payment determined according to section 3 of this Act, receive as a deposit from any person not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate. And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share from which the arrear is due, or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share, or part thereof, subject to the rules in force for taking security in the cases of party in civil suits. And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor. And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof, the amount so credited shall be added to the amount of the original lien.

10. When a recorded sharer of a joint estate, held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the share held in the estate by the applicant. The Collector shall then cause to be published in his own office, in the Court of the Judge, Magistrate (or Joint-Magistrate, as the case may be), and Moonsiffs, and in the Police Thannahs in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him. If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

11. When a recorded sharer of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a state-

ment of the amount of sudder jumma heretofore paid on account of it. On the receipt of this application, the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding section. In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence.

12. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate, that the amount of sudder jumma stated by the applicant to have been heretofore paid on account of such portion of land, is not the amount which has been recognized by the other sharers as the jumma thereof, the Collector shall refer the parties to the civil court, and shall suspend proceedings until the question at issue is judicially determined.

13. Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear is due, shall be given in the advertisement of sale prescribed in section 6 of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of jumma assigned thereto.

14. If in any case of a sale held according to the provisions of the last preceding section, the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share. If such purchase be completed, the Collector or other officer as aforesaid shall give such certificate and delivery of possession as are provided for in sections 27 and 29 of this Act, to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale. If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in section 6 of this Act.

15. If any recorded proprietor or co-partner of an estate shall deposit with the Collector money, or Government securities, endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the jumma of the entire estate, and authorizing the Collector to apply to the payment of any arrear of revenue that may become due from that estate, the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under section 3 of this Act, the Collector shall apply to the payment of such arrear the said money or securities, or such part thereof or of any interest due

on the said securities as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities, for any balance that may remain. And so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of revenue. All monies and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a civil court.

16. It shall be competent to the person making a deposit under the provision of the last preceding section, or his representative or assignee, at any time to withdraw the deposit and to revoke the pledge of the same.

17. No estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards; and no estate, the sole property of a minor or minors and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI of 1822, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same until the minor or minors, or one of them, shall have attained the full age of eighteen years. And no estate held under attachment by the revenue authorities otherwise than by order of a judicial authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no estate held under attachment or managed by a revenue officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management until after the end of the year in which such arrears accrued.

18. It shall be competent to the Collector or other officer as aforesaid, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption. Provided, however, and it is hereby enacted, that the Collector or other officer as aforesaid or the Commissioner shall duly record in a proceeding the reason for granting such exemption; and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption.

19. Sales shall ordinarily be made by the Collector or other officer as aforesaid in the land revenue office at the sudder station of the district: Provided, however, that it shall be competent to the Board of Revenue to prescribe a place for holding sales other than at such office whenever they shall consider it beneficial to the parties concerned.

20. In case the Collector or other officer as aforesaid shall be unable from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid: or if having commenced it he be unable, from any cause, to complete it; he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of revenue, and announcing the adjournment by written proclamation stuck up in his cutcherry; and so on, from day to day, until he shall be able to

commence upon, or to complete the sale; but, with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

21. On the day of sale fixed according to section 6 of this Act, sale shall proceed in regular order; the estate to be sold bearing the lowest number on the towjee or register in use in the Collector's office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in section 22 of this Act.

22. The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid, shall be required to deposit immediately or as soon after the conclusion of the sale of the estate or share as the Collector or other officer as aforesaid may think necessary, either in cash, Bank of Bengal Notes, or Post Bill, or Government Securities to be valued at the market rate of the day, duly endorsed, twenty-five per cent. on the amount of his bid; and in default of such deposit, the estate or share shall forthwith be put up again and sold.

23. The full amount of purchase money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth; and in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold. And in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public revenue, and such difference shall be taken and considered to be a part of the purchase money, and shall be dealt with in the manner hereinafter prescribed for the disposal thereof.

24. When default is made in the payment of purchase money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in section 6 of this Act, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred; and if the payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become due shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding section shall be applicable to every such re-sale. Provided that, if default of payment of purchase money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized.

25. [*Repealed by Act VII, B. O. of 1868, s. 29.*]

26. It shall be competent to the Commissioner of revenue, on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale, and to represent the case to the Board of Revenue, who, if they see cause, may recommend to the local Government to annul the sale; and the local Government in any such case may annul the sale and cause the estate or

share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper.

27. All sales of which the purchase money has been paid up as prescribed in section 23 of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the sixtieth day* from the day of sale, reckoning the said day of sale as the first of the said sixty days. And sales against which an appeal may have been preferred, and dismissed by the Commissioner, shall be final and conclusive from the date of such dismissal, if more than thirty days from the day of sale, or if less, then at noon of the thirtieth day as above provided.

28. Immediately upon a sale becoming final and conclusive, the Collector or other officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act. And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified; and the Collector shall also notify such transfer by written proclamation in his own office, and in the Courts of the moonsiffs and police thannahs within whose jurisdictions any part of the estate or share sold shall be situated.

29. The Collector or other officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum or in such other mode as may be customary, at some convenient place or places; and by affixing a copy of the certificate at the mal-outcherry or in some conspicuous place of the estate or share of an estate purchased.

30. The party certified as the proprietor of an estate or share of an estate by purchase under this Act, shall be answerable for all instalments of the revenue of Government which may fall due after the latest day of payment aforesaid.

31. The Collector shall apply the purchase money first to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold; and secondly to the liquidation of all outstanding demands debited to the estate or share of an estate in the public accounts of the district; holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate sold, or their heirs or representatives to be paid to his or their receipt on demand in manner following: to wit, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt. And if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a civil court.

32. The annulment by a Commissioner or by Government of a sale made under this Act, shall be publicly notified by the Collector or other officer as aforesaid, in the same manner as the becoming final and conclusive of sales is required to be notified by section 23 of this Act, and the amount of deposit and balance of purchase money shall be forthwith returned to the purchaser with interest thereon at the highest rates of the current public securities; which shall be paid by the Government, unless the proprietor shall have become liable for the same under the provisions of section 25 or section 26 of this Act.

33. No sale for arrears of revenue or other demands realizable in the same

* See Act VII of 1868, s. 4.

manner as arrears of revenue are realizable, made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of: and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under section 25 of this Act: and no suit to annul a sale made under this Act shall be received by any Court of Justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in section 27 of this Act: and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase money. Provided, however, that nothing in this Act contained shall be construed to deprive any person considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

34. If a sale made under this Act be annulled by a final decree of a civil court, application for the execution of such decree shall be made within six months after the date thereof: otherwise the party in whose favour such decree was passed shall lose all benefit therefrom. And no order for restoring such decree-holder to possession shall be passed until any amount of surplus purchase money that may have been paid away by order of a civil court be repaid by him, with interest at the highest rate of the current Government securities. And if such party shall neglect to pay any amount so recoverable, within six months from the date of such final decree, he shall lose all benefit therefrom.

35. In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.

36. Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

37. The purchaser of an entire estate in the permanently settled districts of Bengal, Behar, and Orissa, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement; and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants, with the following exceptions:

First. Istemraee or mokurraree tenures which have been held at a fixed rent from the time of the permanent settlement.

Secondly. Tenures existing at the time of settlement, which have not been held at a fixed rent. Provided always that the rents of such tenure shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly. Talookdaree and other similar tenures created since the time of settlement and held immediately of the proprietors of estates, and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

Fourthly. Leases of lands whereon dwelling houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise.

Provided always that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any raiyat, having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

38. The following rules for the registration of talookdarce and other similar tenures created since the time of settlement, and held immediately of the proprietors of estates, and of farms for terms of years so held, shall be observed.

39. There shall be two sets of registers, one for common registry and one for special registry. Common registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue except the Government. Special registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue including the Government.

40. The holder of any talookdarce or other similar tenure, such as is described in section 38 of this Act, desirous of registering it, shall apply by petition to the Collector of the district to which the estate belongs. The application shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable:—

1. The pergunnah or pergunnahs in which the tenure is situated.
2. The nature of the tenure.
3. The name or names of the village or villages whereof the land is composed, or wherein it is situated.
4. The area of the land comprised in the tenure, with its boundaries in complete detail.
5. The amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it.
6. The date of the deed constituting the tenure, or the date when the tenure was created.
7. The name of the proprietor who created the tenure.
8. The name of the original holder of the tenure.
9. The name of the present possessor, and if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

Holders of such farms as are described in the said section may apply in like manner for registry of the same. The application shall contain such of the foregoing particulars as are applicable to farms.

41. When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed; and shall cause a notice, with a copy of the application annexed, to be affixed in his office, and at the mal-cutcherry of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from

the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application. If within the limited time no objection is made, the Collector shall register the tenure or farm. If within the limited time an objection is made by any recorded proprietor, or by any party interested not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, the Collector shall suspend proceedings, and shall refer the parties to the civil court; otherwise he shall grant the application. If the decision of the civil court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

42. When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding section.* If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue to be made; and if he is satisfied that the Government revenue of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application; otherwise the application shall be rejected. If within the limited time any recorded proprietor or any party interested not being a proprietor object to the registry, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection shall suspend proceedings, and shall refer the parties to the civil court; otherwise he shall proceed as if no objection had been made. If the decision of the civil court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

43. Leases of lands of the description specified in the fourth exceptional class in section 37, may be registered, at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of talookdaree and other similar tenures.

44. Tenures of the first and second exceptional classes in section 37 may be registered at the option of the holders; and when so registered shall be entered only in the special register. Application for such registry shall contain the particulars specified in section 40 so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in section 41. If within the limited time no objection is made by any recorded proprietor or by any party interested not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy him as to the validity of the tenure; and if the result be to satisfy him that the tenure is valid, he shall report the case to the Commissioner, who, if also satisfied that the tenure is valid, shall direct it to be entered in the special register; otherwise the application for registry shall be rejected. If within the limited time any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and refer the parties to the civil court; otherwise he shall proceed as if no objection had been made. If the decision of the civil court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time. Provided always

* See Act VIII of 1876, s. 26.

that nothing contained in this section shall be understood as rendering registration necessary for the protection of *bonâ fide* tenures of the description herein referred to.

46. [Repealed by Act III of 1862, B. O.]

46. The actual expenses of any measurement, survey, or local enquiry made under sections 42 and 44 of this Act, shall be borne by the party who applies for the registry of his tenure or farm; and such party may be required by the Collector from time to time to make such advances on this account as he may consider necessary.

47. No civil court shall be competent to order the revenue authorities to enter any tenure or farm in the special register. Provided always that the refusal of the revenue authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be.

48. Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm, may file a suit for the cancelment of the same.

49. In the execution of their functions in the registration of tenures and farms under this Act, all subordinate revenue authorities shall proceed in accordance with the general instructions which they may receive from the superior revenue authorities to whom they are subordinate, and from the local Government; and all orders passed under the sections aforesaid shall be open to appeal in usual course. The order of a Commissioner for the special registry of a tenure under the provisions of this Act, shall be open at any time within one year from the date of registry to revision by the Board of Revenue or the local Government, on the ground of the Government revenue not having been sufficiently secured or of the invalidity of the tenure, as the case may be.

50. Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless in a suit instituted by Government in a civil court within the period allowed for suits for the recovery of the public revenue a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue. Provided that a tenure or farm in the hands of a *bonâ fide* purchaser for value shall not be avoided by reason of such fraud. But the tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector.

51. Tenures and farms of the third exceptional class described in section 37 of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in section 42, shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration, if the final award of the Revenue authorities, upon such application, be in favour of the claimant.

52. The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with raiyats or the like, settled, or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except leases of lands whereon dwelling houses, manufactories, or other permanent buildings have been erected, or whereon

gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing contained in this section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the pergunnah, mouzah, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.

53. Excepting sharers in estates under butwarrah who may have saved their shares from sale under sections 33 and 34, Regulation XIX of 1814, and sharers with whom the Collector, under sections 10 and 11 of this Act, has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner; or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself; shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale and shall not acquire any rights in respect to under-tenants or raiyats, which were not possessed by the previous proprietor at the time of the sale of the said estate.

54. When a share or shares of an estate may be sold under the provisions of section 13 or section 14, the purchaser shall acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

55. Arrears of rent which on the latest day of payment may be due to the defaulter from his under-tenants or raiyats, shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

56. Any Collector or other officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open cutcherry or office for the time being, by fine to an extent not exceeding two hundred rupees, commutable if not paid to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector or other officer as aforesaid, shall carry his sentence into effect. Provided that an appeal from any order passed under this section shall lie to the Revenue Commissioner, whose decision shall be final.

57. A default to make good a bid by making the deposit required by section 22 of this Act, shall be held to be a contempt.

58. When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other officer as aforesaid may purchase the estate on account of the Government for one rupee, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other officer as aforesaid may take or purchase the estate on account of the Government at the highest amount bid; in both which cases the Government shall acquire the property subject to the provisions of this Act.

59. *[Repealed by Act III of 1862, B. C.]*

60. The provisions of Regulation VIII, 1822 and Regulation IX, 1825 shall be in force in every estate in any part of which a measurement, survey, or local

enquiry may be made under this Act; and in every estate purchased or taken on account of Government under this Act.

61. In the construction of this Act the word "Collector" shall include a Deputy Collector or other officer exercising by the authority of Government the powers of a Collector or Deputy Collector.

62. The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal, as are or shall be subject to the general Regulations of that Presidency.

SCHEDULE A.

I certify that A. B. has purchased under Act No. XI of 1859 the mehal (or share of a mehal) specified below, standing in the towjee of the District of _____, and that his purchase took effect on the _____ day of _____ (being the day after that fixed for last day of payment).

(Signed) D. E.,
Collector.

SPECIFICATION.

(If of an entire Mehal.)

Towjee number
Name of mehal
Name of the former proprietor
Sudder jumma.

(If of a share of a Mehal.)

Towjee number of the entire mehal
Name of the entire mehal
Sudder jumma of the entire mehal
Description of the share sold
Subordinate Towjee number of the share sold
Name of the former proprietor of the share sold
Sudder jumma for which the share sold is separately liable.

SCHEDULE B.

FEEs.

For filing an application under section 10 or section 11 for opening a separate account for a share of an entire estate.

If the annual jumma of the share do not exceed two hundred and fifty rupees. Rs. 25 0 0.

If the annual jumma of the share exceed two hundred and fifty rupees and do not exceed one thousand rupees, at the rate of ten per cent. upon the jumma.

If the annual jumma of the share exceed one thousand rupees, at the rate of ten per cent. upon one thousand rupees, and two per cent. upon all above that amount.

For filing an application for a deposit of money or Government securities under section 15, half per cent. on the amount deposited.

For any interest on Government securities so deposited, drawn by the Collector, half per cent. of the amount drawn.

For filing an application for withdrawal of a deposit under section 16, half per cent. of the amount withdrawn.

For filing an application under sections 40, 43, or 44 for the registration of an under-tenure or farm.

If the annual rent of the under-tenure do not exceed five hundred rupees. Rs. 25 0 0.

If the annual rent of the under-tenure exceed five hundred rupees and do not exceed one thousand rupees, at the rate of five per cent. upon the rent.

If the annual rent of the under-tenure exceed one thousand rupees, at the above rate up to one thousand rupees, and at one per cent. upon all above that amount.

ACT XII OF 1841.

(PASSED ON THE 19TH JULY, 1841.)

An Act for amending the Bengal Code in regard to sales of land for arrears of revenue.

N. B.—The whole of this Act has been repealed by Act XIV of 1870 except section 2 which is as follows:

2. There shall be no demand of interest or penalty upon any arrears of land revenue.

ACT. NO. III OF 1862.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

(Received the assent of the Governor-General on the 21st April 1862.)

An Act to amend Act XI of 1859 (to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency.)

Whereas it is expedient to extend the period allowed for the registry of under-tenures and farms, and to alter the scale of fees on certain applications for the opening of separate accounts for shares of entire estates for deposit of money or Government securities, and for registry of under-tenures and farms; It is enacted as follows:—

1. Sections 45 and 59 of Act XI of 1859 are hereby repealed.

2. Applications under sections 40, 43, and 44 of Act XI of 1859, for registry of tenures and farms created before the passing of Act XI of 1859, must be made within three years of the passing of this Act. Applications for the registry of tenures existing at the time of the passing of this Act, but created after the passing of Act XI of 1859, must be made within three months of the passing of this Act. Applications for the registry of tenures created after the passing of this Act must be made within three months of the date of the Deed constituting the tenure.

3. The Collector on the part of the Government shall be entitled to demand from applicants under sections 10 and 11, sections 15 and 16, sections 40, 43, and 44 of Act XI of 1859, fees not exceeding the rates specified in the

schedule to this Act annexed, which schedule shall be taken as part of this Act; and applications under the said sections shall not be received unless the said fees are tendered therewith.

4. This Act shall be taken and read as part of the said Act XI of 1859.

SCHEDULE OF FEES.

1. For filing an application under section 10 or section 11 of Act XI of 1859, for opening a separate account for a share of an entire estate—

If the annual jumma of the share do not exceed 1,000 rupees at the rate of ten per cent. upon the jumma. If the annual jumma of the share exceed 1,000 rupees at the rate of ten per cent. upon 1,000 rupees, and two per cent. upon all above that amount.

2. For filing an application for a deposit of money or Government securities under section 15 of the said Act, half per cent. on the amount deposited.

For any interest on Government securities so deposited, drawn by the Collector, half per cent. on the amount drawn.

For filing an application for withdrawal of a deposit under section 16 of the said Act, half per cent. on the amount withdrawn.

3. For filing an application, under sections 40, 43, or 44, of the said Act, for the registration of an under-tenure or farm—

If the annual rent of the under-tenure or farm do not exceed 1,000 rupees, at the rate of five per cent. on the rent.

If the annual rent of the under-tenure or farm exceed 1,000 rupees, at the above rate up to 1,000 rupees, and at one per cent. on all above that amount.

PART VII.

PUBLIC DEMANDS RECOVERY.

**REGULATION III OF 1794; ACT VII B. C. OF 1868 (AS
AMENDED BY ACT II B. C. OF 1871, AND VII B. C. OF 1880)
ACT VII B. C. OF 1880.**

REGULATION III OF 1794.

A Regulation for exempting proprietors of land (with certain exceptions) from being confined for arrears of revenue; and for prescribing the process by which tahsildars are to demand payment of arrears; and for enabling the Collectors to recover from native officers employed under them, public money or papers which they may embezzle or retain; and for expediting the trial causes relating to the public revenue or the rents of individuals. Passed by the Governor-General in Council on the 14th March 1794.

12. That proprietors and farmers of land may be enabled to recover sums that may be exacted from them by the Collector on the part of Government above what they may be bound to pay by their engagements and that they may be indemnified from all loss they may sustain by such exactions, it is declared that if a Collector shall demand a sum of money from proprietor or farmer of land or account of arrears in the manner prescribed in section 3, Regulation XIV of 1793, and the proprietor or farmer shall deny, by a writing to that effect addressed to the Collector, the justness of the whole or a part of the demand, but to prevent any further process being issued against him shall discharge the whole of the demand, the proprietor or farmer shall be at liberty to sue the Collector in the Dewani Adawlat of the zillah for the recovery of the sum which he may consider to have been unjustly taken from him, and the Court shall give judgment in favour of the complainant for all such sums as may be proved to have been unduly exacted from him, and the amount of such judgment shall be refunded to him from the public treasury of the zillah with interest at the rate of twelve per cent. per annum, from the date of exaction to the date of the decree.

All the rules in Regulation XIV of 1793 respecting suits instituted against a Collector for sums actually received by him on the part of Government from any proprietor or farmer of land or from the surety of any farmer are to be considered applicable to suits that may be instituted against the Collector under this section.

13. When arrears shall become due from proprietors or farmers of land, whose revenue may be made payable to a tahsildar or other officer appointed by Government to collect it, such officer is to demand the payment of the arrears by the same process as Collectors are required to observe in requiring the discharge of arrears. If the defaulter shall not liquidate the arrears by the prescribed period, the tahsildar or other officer is to report the amount of the arrear to the Collector who is to proceed to the recovery of it by the same process as he is directed to observe in recovering arrears due from proprietors or farmers paying revenue immediately to the treasury of the zillah.

16. If a Collector shall have a claim on the part of the Government of any of the native officers described in the preceding section for a balance of accounts or money or papers belonging to Government he is to require the payment of the money, or the delivery of the papers by a writing under his official seal and signature, and the signature of his dewan or other head native officer of his daftra for the time being, specifying the amount of the money or the particular papers required, and the date and place that may be fixed for the delivery of the money or papers. If the officer shall not discharge the money or deliver up the papers by the limited time, the Collector is empowered to apprehend him and convey him to the jail of the Dewani Adawlat of the zillah, the Judge of which Court shall detain him in confinement until the sum demanded of him shall be discharged or he shall have delivered up the papers. The Collector is authorized likewise to attach such part of the real or personal property belonging to the officer, as may be sufficient to make good the sum which may be due from him. If his property

shall be in another zillah he is to apply to the Collector of that zillah who shall cause it to be attached. If the property shall be within the cities of Patna, Dacca or Murshedabad, the Collector is to apply to the Judge of the zillah, through the vakil of Government, to make application to the Judge of such city to attach and deliver it into the charge of the nearest Collector. The Board of Revenue are empowered to order the property to be sold under the rules by which the lands of proprietors are directed to be disposed of for the discharge of arrears of revenue.

In the event of the death of any such officer, the surety is to be exonerated from all responsibility, and the Collector is to proceed against his heirs by a regular suit in the Court to which they may be amenable for any claims which Government may have upon the deceased. The suit is to be carried on by the vakil of Government, and the public expenses, and the rules in Regulation XIV of 1793 regarding suits so carried on by the Collectors, are to be held applicable to it.

(The native officers described in the preceding section are tehsildars, sazawals, ameenas, sheristadars, munshis, mohurrirs, and all native officers entrusted with the receipts or payment of public money, or the charge of public accounts. See Act XII of 1850 and *ante*, p. 97.)

17. If any such native officers who may have retained public money or papers in his possession shall abscond or not to be forthcoming the Collector may proceed against the surety upon his engagement or apprehend the offender and commit him to prison, if he be within the limits of the zillah; or if he shall have taken refuge in any other zillah, or in either of the cities of Patna, Dacca, Murshedabad, and the Collector shall deem it necessary to require his personal attendance that he may proceed against him instead of his surety, the Collector is to apply to the Judge of the zillah, to request the Judge within whose jurisdiction the officer may be or reside to cause him to be apprehended. The Judge to whom the application may be made is to convey the officer in safe custody to the jail of the zillah from which he may have absconded.

18. If a Collector shall have occasion to require any such officer to attend to adjust his accounts, that the sum due from him may be ascertained, and he shall not attend upon being required by a writing to that effect under the official seal and signature of the Collector to be fixed up in his kachari and at the place in the zillah at which the officer may have last resided, the Collector is empowered to prepare the most accurate statement that he may be able of the money or papers in the possession of such officer, and proceed against the surety upon his engagement for the balance, or papers in the same manner as if the accounts had been adjusted and the list of the papers prepared in the presence of the officer; or he may cause the officer to be apprehended by his own authority under section 16, if he be within the limits of the zillah, or, if he shall have taken up his abode in any other zillah or in either of the cities of Patna, Dacca, or Murshedabad by application to the Judge in the manner directed in section 17. If it should afterwards appear upon enquiry before the Court, that no part or a portion only of the sum demanded was due from him, or that the papers required were not in his possession, the Collector shall not be liable to pay any damages for having confined him, and all costs that may be incurred in the suit or enquiry shall be paid by the officer.

19. If any such officer or his surety shall be confined on account of a claim for public money, and previous to the sale of his property, or, supposing the Collector not to have been able to get possession of any property belonging to him at any time subsequent to his confinement, shall deny the justness of the whole or any part of demand made upon him by the Collector, and find some responsible person who will become security that he will institute a suit in the Court in fifteen days against the Collector to try the demand, and to pay the sum

that may be awarded against him with cost and interest at the rate of twelve per cent. from the date on which the sum may be demanded of him to the date of the decree, the Court is to discharge the officer or surety and proceed to the trial of the suit; and, if any property belonging to the officer or surety shall have been ordered to be sold, the sale shall be countermanded and the property restored to the owner.

20. If any such native officer or his surety shall be committed to custody by the Collector, and shall not obtain his release in the mode specified in section 19, he shall nevertheless be at liberty whilst in confinement to sue the Collector by whom he may have been confined, should he deem the demand upon him unjust.

ACT VII OF 1868.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

(Received the assent of the Lieutenant-Governor on the 16th July 1868, and of the Governor-General on the 10th August 1868.)

An Act to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue.

Whereas it is expedient to amend and extend the law for the recovery of arrears of land revenue and of public demands recoverable as arrears of land revenue, it is declared and enacted as follows:

1. In this Act and in Act XI of 1859 (to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency), the words in this section mentioned shall have the meanings therein attributed to them respectively.

The word "proprietor" includes any tenant by whom any estate or tenure is held directly under Government.

The word "revenue" includes every sum annually payable to Government by the proprietor of any estate or tenure in respect thereof and every sum payable to Government in respect of tuccavee, or of any money advanced by Government to proprietors of land for making or repairing embankments, reservoirs, or water-courses, or other improvements on the land held by them.

The word "estate" means any land or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the registers known as the general register of all revenue-paying estates or in respect of which a separate account may in pursuance of section 10 or section 11 of the said Act XI of 1859 have been opened.

The word "tenure" includes all interests in land whether rent-paying or lakhiraj (other than estates as above defined), and all fisheries which by the terms of the grants creating the same or by the custom of the country are transferable, whether such tenures are resumable or not, and whether the right of selling or bringing them to sale for an arrear of rent may or may not have been specially reserved by stipulation in any instrument.

The "jurisdiction" of a Collector means the district to which such Collector is appointed or throughout which any officer vested with the powers of a Collector is authorized to exercise such powers.

The word "Collector" includes any person vested with the power of Collector.

(The remaining portion of the section has been repealed by Act VII of 1880, B. C.)

2. It shall be lawful for the Commissioner of revenue to receive an appeal against any sale made under this Act or the said Act XI of 1859, so that such appeal be preferred to such Commissioner on or before the sixteenth day from the day of sale reckoning as in section 23 of the said Act XI of 1859, or be presented to the Collector or other officer duly authorized to hold sales under the said Act for transmission to the Commissioner on or before the forty-fifth day from the day of sale reckoning as aforesaid, and not otherwise; and the Commissioner shall be competent in every case of appeal so preferred, to annul any sale of an estate or share of an estate made under this Act or Act XI of 1859, which appear to him not to have been conducted according to the provisions of the said Acts, awarding at the same time to the purchaser a payment from the proprietor of compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed the interest at the highest rate of the current Government securities on the amount of deposit or balance or purchase money during the period of its being retained in the Collector's office; and the order of the Commissioner shall in such cases be final.

3. From the date when this Act comes into operation the word "thirty" shall be substituted for the word "fifteen" in section 6 of the said Act XI of 1859, and the words "is more than thirty" in the same section shall be omitted therefrom, and the said section shall be read as if the same had not been inserted therein.

4. From the date when this Act comes into operation, the word "sixtieth" and "sixty" shall be substituted for the words "thirtieth" and "thirty" respectively wherever the said words occur in section 27 of the said Act XI of 1859.

5. Every notice in and by this Act or by the said Act XI of 1859 directed to be served, shall be served by delivering to the person to whom it may be directed a copy thereof attested by the Collector, or by delivering such copy at the usual place of abode of such person to some adult male member of his family, or in case it cannot be so served by posting such copy upon some conspicuous part of the usual or last known place of abode of such person. In case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such ways as the Collector issuing such notice may direct.

6. It shall be lawful for the Lieutenant-Governor of Bengal, by an order published in the Calcutta *Gazette*, to empower all Collectors in any district in such order mentioned, if they shall think fit, to cause such notices as shall be in such order specified, to be served upon any proprietors, before proceeding under the provisions of the said Act XI of 1859 or of this Act to realize from such proprietors any arrears of revenue which may be due from such proprietors and the costs of serving any such notices as shall be served under the powers conferred by any such order not exceeding such sums as shall in such order be specified, shall be added to any arrears of revenue which may be due from such proprietors and shall be recoverable as if the same were a portion of such arrears of revenue; and every such order may from time to time be altered, varied, or revoked by any other order of the said Lieutenant-Governor to be from time to time in like manner published.

7. In addition to the notices in and by section 7 of the said Act XI of 1859 directed to be posted, a similar notice shall be posted at the subdivisional cutcherry within the jurisdiction of which the estate to which such notice refers, or some portion thereof, is situate.

8. Every certificate of title which may be given to any purchaser under the provisions of section 28 of the said Act XI of 1859, or of section 11 of this Act, shall be conclusive evidence in favour of such purchaser, and of every person

claiming under him, that all notices in or by this Act, or by the said Act XI of 1859, required to be served or posted, have been duly served and posted; and the title of any person who may have obtained any such certificate shall not be impeached or affected by reason of any omission, informality, or irregularity as regards the serving or posting of any notice in the proceedings under which the sale was had at which such person may have purchased.

9. All sales of lands of lakhiraj tenure, which may heretofore have been made in conformity with the procedure established by the said Act XI of 1859, for payment of arrears of revenue or of demands, shall have such and the same force and effect as if they had been made in execution of a decree against the person liable to pay the revenue or demand for satisfaction of which such sale may have been made.

10. Every estate shall, for the purposes of this Act and of the said Act XI of 1859, be deemed to be within the Collectorate of the Collector upon whose general register the revenue thereof may be borne, although the whole or any portion of the lands comprised in such estates may be without the local limits of his jurisdiction, but all lands and tenures shall be deemed to be within the jurisdiction within the local limits of which they may be situated, although the estate of which they form a part may, under the provisions of this section, be deemed to be within the Collectorate of any other Collector.

11. Whenever any revenue payable to Government in respect of any tenure not being an estate shall be in arrear after the latest day of payment fixed in the manner prescribed in section 3 of Act XI of 1859, the Collector to whom such revenue is payable may cause the tenure to be sold in the manner and subject to the provisions in and by the said Act XI of 1859 provided for the sale of estates for the recovery of arrears of revenue, and the Collector shall apply the purchase-money arising from such sale according to the provisions of section 31 of the said Act XI of 1859, except that the residue, if any, shall be held in deposit on account of the holder of the tenure and not on account of the proprietor of the estate; and every such Collector shall, upon every such sale of any tenure being final and conclusive, give to the purchaser thereof such certificate of title thereof as is provided in section 28 of the said Act XI of 1859 with respect to estates.

12. The purchaser of any tenure sold under the provisions of section 11 of this Act shall acquire it free from all incumbrances which may have been imposed upon it after its creation, or after the time of settlement, whichever may have last occurred, and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions:—

First. Istemrarce or mookurrarce tenures which have been held at a fixed rent from the time of the permanent settlement.

Secondly. Tenures existing at the time of permanent settlement, which have not been held at a fixed rent. Provided always that the rent of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly. Tenures created or recognized by the settlement proceedings of any current temporary settlement, as tenures bearing a rent which is fixed for the period of such settlement.

Fourthly. Tenures of lands whereon dwelling houses, manufactories, or other permanent buildings have been erected, or whereon permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made.

I. L. R., 8 Cal., 230; 4 C. L. R., 915.

13. Every purchaser of a tenure under section 11 of this Act shall be en-

titled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class exception above made, if he can prove the same to have been held at what was originally an unfair rent, unless the same shall have been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

14. Provided always that nothing hereinbefore contained shall be construed to entitle any such purchaser under section 11 of this Act, to eject any raiyat having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than as the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

15-25. [*Repealed by Act VII B. C. of 1880.*]

29. From and after the passing of this Act, the Acts and Regulations and portions of Acts and Regulations in Schedule (E) set forth shall stand and be repealed, so far as they are in such schedule mentioned be repealed.

30. This Act shall be read with, and taken as part of the said Act XI of 1859, as modified by Act III of 1862 of the Lieutenant-Governor of Bengal in Council.

ACT No. VII B. C. OF 1880.

RECEIVED THE ASSENT OF THE LIEUTENANT-GOVERNOR ON THE 22ND APRIL 1880,
AND OF THE GOVERNOR-GENERAL ON THE 26TH JUNE 1880.

An Act to amend the Law for the recovery of certain public demands.

Whereas it is expedient to amend the law for the recovery of certain dues and debts demandable by public officers; It is hereby enacted as follows:—

1. This Act may be called “The Public Demands’ Recovery Act, 1880.”

Notwithstanding anything contained in section 2, it extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal.

It shall come into operation on and after the date on which it shall be published in the *Calcutta Gazette* with the assent of the Governor-General.

2. This Act, so far as is consistent with the tenor thereof, shall be construed as one with Act XI of 1859, passed by the Governor-General in Council, and Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council. The powers given by this Act shall be deemed to be in addition to, and not in derogation of, any powers conferred by any Act now being in force for the recovery of any due, debt, or demand to which the provisions of this Act are applicable.

3. The Acts specified in the first schedule annexed to this Act are hereby repealed from and after the commencement of this Act, to the extent specified in the third column of that schedule: provided that this repeal shall not affect—

(a) the past operation of any enactment hereby repealed, nor anything duly done or suffered thereunder:

(b) any liability created under any enactment hereby repealed.

Every Certificate made under the provisions hereby repealed of Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council, may be enforced under the provisions of this Act.

4. In this Act, unless the context otherwise requires, but not in the other Acts mentioned in section 2,

“Section” means a section of this Act.

“Collector” means (a) within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal, the Collector of Calcutta; (b) without those limits, the Collector of a district or any officer specially appointed by the Lieutenant-Governor to perform the functions of a Collector under this Act; and (c) any officer in charge of a sub-division of a district whom the Collector of such district, with the sanction of the Commissioner, authorizes to perform such functions as aforesaid.

5. In the following cases, that is to say—

(1) when, under the provisions of Act XI of 1859, passed by the Governor-General in Council, or of Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council, an estate or tenure has been sold for the recovery of arrears of revenue due thereupon, and, after deducting the expenses of such sale, the balance of the sale-proceeds remaining is insufficient to liquidate the arrears of revenue in discharge of which such sale-proceeds may under the aforesaid provisions be applied;

(2) when arrears of revenue due from a farmer on account of an estate held by him in farm are not paid on the latest day of payment fixed under the provisions of section 3 of Act XI of 1859, passed by the Governor-General in Council;

the Collector may make under his hand, and in form No. 1 in the second schedule annexed to this Act, a certificate of the amount of arrears so remaining unpaid, and may cause the same to be filed in his office.

6. (a) Subject to the provisions of this Act, every certificate made under the provisions of section 5 shall, as regards the remedies for enforcing the same and so far only, have the force and effect of a decree of a civil court, and the Secretary of State for India in Council shall be deemed to be the decree-holder, and the person therein named as debtor shall be deemed to be the judgment-debtor.

(b) Such judgment-debtor may at any time within one year after the service upon him of such notice as is mentioned in section 10, bring a suit in the civil court to have the said certificate cancelled on the ground that the arrears stated therein were not due by him; but no such suit shall be entertained unless such judgment-debtor has paid such arrears to the Collector within one month after being served with the said notice, or, in any case in which he has filed a petition of objection under section 12, then within fifteen days after such petition has been heard and determined.

(c) If no such suit is instituted within the said period of one year, or if any such suit having been so instituted, is decided against such judgment-debtor, such certificate shall become absolute, and shall have to all intents and purposes the effect of a final decree of a civil court.

7. When any arrears of the following Public Demands are unpaid by the person liable to pay the same, that is to say—

(1) any sum of money which, by any law for the time being in force is declared to be recoverable or realizable as an arrear of revenue or land-revenue, or by the process prescribed for the recovery of arrears of revenue or of the public or Government revenue;

(2) any sum of money due from the sureties of a farmer in respect of the revenue of the estate farmed by him;

(3) any such demand, money, fee, duty, arrear, fine, or costs as is mentioned in the following sections of the following Acts passed by the Lieutenant-Governor of Bengal in Council, that is to say—in Act VIII of 1862, section 9; in Act VI of 1873, section 50; in Act IV of 1875, section 1; in Act V of 1875, section 57; in Act III of 1876,

section 42, section 73, and section 85; in Act VII of 1876, section 82; in Act VIII of 1876, section 138; in Act VII of 1878, section 36; or in the following sections and portions of the following Act passed by the Governor-General in Council, that is to say—in Act VII of 1870, "The Court Fees' Act," sections 19G, 19H and the note to paragraph 12 of schedule I:

- (4) in the case of a person to whom the collection of tolls has been farmed under the provisions of section 8 of, "The Canals Act, 1864," or of the sureties of such person—any sum of money due in respect of such farm:
- (5) in the case of a person having charge of a ferry subjected to the payment of a yearly rent—any arrear of such rent ascertained and certified as provided in Regulation VI of 1819, section 10:
- (6) any arrears of revenue or rent payable to the Secretary of State for India in Council from any raiyat, or from any person holding any interest in land, pasturage, forest rights, fisheries, and the like, whether such interest is or is not transferable:
- (7) in the case of property which, under the provisions of any law for the time being in force, has been taken under the charge of, or is managed by, the Court of Wards or the revenue authorities on behalf of a private individual—any arrears of rent or of other demands recoverable as rent, whether such arrears became due before or after the management devolved upon such court or such Authorities: provided that this clause shall not apply to any arrears of rent at an enhanced rate, unless such enhanced rate has been agreed to by the person liable to pay the same, or has been confirmed by a competent court:
- (8) any sum payable to a public officer of Government in respect of which the person liable to pay the same has agreed by a written instrument duly registered that it shall be recoverable under the provisions of this Act:
- (9) any fee, duty, tax, or other demand, which by any Act passed hereafter shall be declared to be recoverable under the provisions of this Act:

the Collector of the district may make under his hand, and in form No. 2 in the second schedule annexed to this Act, a certificate of the amount of such arrears so remaining unpaid, and may cause the same to be filed in his office: provided that no such certificate shall be made in respect of any such demand, the recovery of which is barred by any law of Limitation for the time being in force.

8. (a) Subject to the provisions of this Act, every certificate made under the provisions of section 7 shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a civil court. In the cases other than case (7) mentioned in the said section 7, the Secretary of State for India in Council and in the said case (7) the private individual therein mentioned, or, if such private individual be a minor, lunatic or ward of Court, then such minor, lunatic, or ward of Court by his next friend, shall be deemed to be the decree-holder, and in all the cases mentioned the person therein named as debtor shall be deemed to be the judgment-debtor.

(b) Such judgment-debtor may at any time within one year after the service upon him of such notice as is mentioned in section 10 bring a suit in the civil court to contest his liability to pay the amount stated in the said certificate, and to have such certificate cancelled: but no such suit shall be entertained unless such judgment-debtor has stated in a petition presented to the Collector under section 12 the ground upon which he claims to have such certificate

cancelled, or unless, having omitted to state such ground in such petition as aforesaid, he can satisfy the civil court that there was good reason for such omission. If no such suit is instituted within the said period of one year, or if any such suit having been instituted is decided against such judgment-debtor, such certificate shall become absolute, and shall have to all intents and purposes the same force and effect as a final decree of a civil court.

Provided that no certificate duly made under the provisions of this Act shall be cancelled by a civil court otherwise than on one or more of the following grounds, that is to say—

- (1) that the amount stated in the certificate was actually paid or discharged before the making of such certificate:
- (2) in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a public officer under the provisions of any Regulation or Act for the time being in force—that the proceedings of such Collector or public officer were not in substantial conformity with the provisions of such Regulation or Act, and that in consequence the judgment-debtor under the certificate suffered substantial injury from some error, defect or irregularity in such proceedings:
- (3) in cases other than those mentioned in clause (2)—that the amount stated in the certificate was not due by the judgment-debtor under the certificate:
- (4) want of jurisdiction.

I. L. R., 7 Cal., 34; 3 W. R., (Mis.) 11; W. R. (Mis.) 4; 10 W. R., 3; I. L. R., 5 Cal., 325.

Nothing in this proviso shall be construed to interfere with the ordinary original jurisdiction of the High Court at Fort William in Bengal, or with the jurisdiction of the Calcutta Court of Small Causes.

9. (a) When any arrear of any of the public demands specified in section 7 is unpaid by any person liable to pay such public demand to a public officer other than a Collector, or when any such demand as is specified in clause (7) of the said section is unpaid by any person liable to pay the same to a manager appointed by the Court of Wards, such officer or such manager may give to the Collector of the district, in which such person resides, or in which such demand is payable, a notice in writing in form No. 3 in the second schedule annexed to this Act: provided that no such notice may be given in respect of any such demand, the recovery of which is barred by any law of Limitation for the time being in force.

(b) Every such notice given by a manager shall be verified by such manager in accordance with the provisions of the Code of Civil Procedure as to the verification of plaints, and there shall be payable in respect thereof a Court-fee of the same amount as is payable under the Court Fees' Act for the time being in force in respect of a plaint for the recovery of a sum of money equal to that stated in such notice.

(c) On receipt of such notice, such Collector, if satisfied that such demand is justly recoverable, may make under his hand, and in the form No. 2 in the second schedule annexed to this Act, a certificate of the amount of such arrears so remaining unpaid, and shall cause the same to be filed in his office.

(d) The provisions of section 8 shall apply to every such certificate.

10. When a certificate has been filed in the office of a Collector under the provisions of section 5, or section 7, or section 9, such Collector shall issue to the judgment-debtor a copy of such certificate and a notice in form No. 4 in the second schedule annexed to this Act. From and after the service of such notice,

such certificate shall bind all immovable property of such judgment-debtor situate within the jurisdiction of such Collector in the same manner and with like effect as if such immovable property had been attached under the provisions of section 274 of the Code of Civil Procedure. A copy of such certificate may be transmitted by post to any other Collector for the purpose of being filed in his office, and as soon as it is so filed, such certificate shall, if the aforesaid notice has been served, bind in like manner all immovable property of such judgment-debtor situate within the jurisdiction of such last-mentioned Collector.

11. If in any case other than the case mentioned in clause (7) of section 7, the Collector is satisfied that any person against whom a certificate has been filed under the provisions of section 5, or section 7, or section 9, is likely to conceal, or remove, or dispose of the whole or any part of his movable property, and that the realization of the amount of such certificate will in consequence be delayed or obstructed, he may at any time after making such certificate direct an attachment of the whole or any part of the movable property of such person. Such attachment shall be made in the manner provided in the Code of Civil Procedure for attaching movable property, and subject to the provisions of section 266 of the same Code. Such property may be sold for the purpose of satisfying such certificate, if no petition of objection is filed under section 12, or if any such petition is filed, then as soon as it has been heard and determined.

12. If any person, who has been served with a notice under section 10, denies his liability to pay the whole or any part of the amount for which such certificate has been made and filed against him, he may at any time within thirty days after service of such notice or where no such notice has been duly served, within thirty days after the execution of any process for enforcing such certificate, file a petition, denying his liability as aforesaid, before the Collector by whom such certificate has been made. Such petition shall be in, or as nearly as possible in, the form No. 5 in the second schedule annexed to this Act.

13. Such Collector shall fix a day for hearing any such petition so filed, and upon such day, or any subsequent day to which such hearing may be adjourned, shall determine whether such petitioner is liable for the whole or any part of the amount for which such certificate was made, and may set aside or modify or vary the certificate accordingly. Every such Collector shall, for the purpose of hearing any such petition and determining as aforesaid, exercise all or any of the powers of a civil court in respect of summoning, causing the attendance of, and examining witnesses, and in respect of causing the production of document; and the provisions of the Code of Civil Procedure applicable to these matters shall apply to a Collector exercising these powers.

14. The Collector shall have full power to direct that the costs of such petition and of the hearing thereof shall be paid by the petitioner, and in any case in which a Collector directs the payment of such costs by any such petitioner, the amount thereof shall, if such petitioner be the judgment-debtor, be added to the amount entered in the certificate, and shall be recoverable as if the same had been originally entered thereon.

15. The Collector of a district may refer to any Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner subordinate to him, any such petition as is mentioned in section 12, and such Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner shall hear and determine such petition accordingly. The provisions of sections 13 and 14 shall be applicable to any such Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner to whom any such petition has been so referred.

16. An appeal from any order of a Deputy Collector or Assistant Commis-

sioner or Extra Assistant Commissioner may be preferred to the Collector within fifteen days, and an appeal from any original order of a Collector may be preferred to the Commissioner within thirty days after the making of such order respectively. Pending the decision of such appeal, execution may be stayed, if the appellate authority so direct, but not otherwise.

17. There shall no appeal, as of right, lie from any order of a Collector passed on appeal from an order of a Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner; But the Commissioner may, in any case in which he thinks fit, revise any order passed by a Collector or Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner.

18. Every certificate made under the provisions of section 5, or section 7, or section 9, may be enforced and executed, upon the expiry of one month after service of the notice mentioned in section 10, or when any such petition as is mentioned in section 12 has been filed, then as soon as such petition has been heard and determined.

19. Such certificate may be so enforced and executed by all or any of the ways and means mentioned and provided in and by the Code of Civil Procedure for the enforcement and execution of decrees, for money, and all the practice and procedure provided by the said Code of Civil Procedure in respect of sales in execution of decrees; in respect of raising the amount of a decree otherwise than by sale of immovable property under the provisions of sections 305, 320, 322, 323, and 324 of the said Code; in respect of arrests in execution of decrees for money; in respect of the execution of decrees by imprisonment; in respect of insolvent judgment-debtors; in respect of claims to attached property; in respect of resistance to the execution; and in respect of the execution of decrees out of the jurisdiction of the courts by which they were passed shall apply to every execution issued to enforce such certificate and realize the amount recoverable thereunder, save that all the duties, powers, and authorities by the said Code imposed or conferred on the Court shall be exercised by the Collector in whose office any such certificate, or any copy thereof, transmitted for execution under the provisions of section 223 of the said Code has been filed. Subject to the control of the Collector and save and except in respect of the provisions relating to insolvent judgment-debtors, any of the said duties, powers, and authorities may be exercised by any Deputy Collector, Assistant Commissioner, or Extra Assistant Commissioner subordinate to such Collector.

I. L. R., 3 Bom. 89; I. L. R., 7 Cal., 346; 11 Bom., 15; 10 C. L. R., 461; 9 C. L. R., 263; 9 C. L. R., 295; 10 B. L. R., 159; 9 C. L. R., 341; I. L. R., 9 Cal., 656.

20. If any immovable property is sold in execution of a certificate under the provisions of section 18, and if such certificate is subsequently set aside by a competent Court, such Court may set aside such sale of such immovable property, and in any case in which such sale is so set aside, such Court shall direct that the amount of the purchase-money be refunded to the purchaser with or without interest, as such Court thinks fit: provided that no such sale shall be so set aside unless such purchaser has been made or added as a party to the suit brought to set aside such certificate.

21. Every Collector shall cause to be kept in his office a register in such form as may from time to time be prescribed by Board of Revenue and shall cause to be entered in such Register the particulars of every Certificate made under this Act, which, or a copy of which, has been filed in his office. Such register shall be open during office hours to the inspection of any one desiring to inspect the same, and a fee of eight annas, or such fee not exceeding eight annas as the Board of Revenue may prescribe, shall be chargeable for such inspection.

22. (a) Payment of the amount due under a certificate may be made by instalments, if the Collector who made such certificate so direct. The payment of any instalment shall be entered in the register mentioned in section 21.

(b) When the total amount due under a certificate has been paid and satisfied, the Collector in whose office such certificate was originally filed shall enter satisfaction upon such certificate under his hand and signature; and shall cause the same to be entered in the register mentioned in section 21.

(c) When a copy of such certificate has been transmitted to another Collector, or when such certificate has been made under the provisions of section 9 upon notice from a public officer other than a Collector or from a Manager appointed by the Court of Wards, such satisfaction shall be communicated to such other Collector or to such officer or to such manager.

(d) When a sum has been levied or received by a Collector in respect of a certificate a copy of which has been transmitted to him and filed in his office, such Collector shall send such sum to the office in which such certificate was originally made.

23. Every Collector, Deputy Collector, Assistant Commissioner and Extra Assistant Commissioner and every such public officer as is mentioned in section 9 shall, in the discharge of his functions under this Act, be deemed to be a person acting judicially within the meaning of Act XVIII of 1850, passed by the the Governor-General in Council.

24. All Collectors, Deputy Collectors, Assistant Commissioners, and Extra Assistant Commissioners shall, in the performance of their duties under this Act, be subject to the general supervision and control of the Commissioners of divisions and the Board of Revenue.

FIRST SCHEDULE—(See section 3.)

Number and year.	Subject of Act.	Extent of repeal.
VIII of 1862	<i>Acts passed by the Lieutenant-Governor of Bengal in Council.</i> An Act to improve the system of zamindari daks in the provinces subject to the Government of Bengal.	In section 9, the words from and including "which said double amount" to and including "making default."
VII of 1868	An Act to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue.	In section 1, from and including the words "The word 'Demand' means" to the end of the section. In section 2, the words "not being a sale made under, and by virtue of, any execution issued upon a certificate made as hereinafter is provided." In section 6, the words "or persons liable to any demands," "or persons," "or any demands," "or persons," "or to any demands," "or persons," and "or of such demands." Sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1873 ...	An Act to amend the law relating to Embankment and Water courses.	Section 50, from and including the words "under the provisions" to the end of the section.
I of 1875 ...	An Act for the realization of arrears in Government estates.	The whole Act.
IV of 1875 ...	An Act to provide for the summary realization of sums due on account of loans made by the Government during the late famine operations.	Section 1, from and including the words "within the meaning" to the end of the section.
V of 1875 ...	An Act to provide for the Survey and Demarcation of Land.	In section 57, from and including the words "under section 2" to the end of the section.
III of 1876 ...	An Act to provide for Irrigation in the provinces subject to the Lieutenant-Governor of Bengal.	In section 42, from and including the words "under the provisions" to the end of the section. In section 73, from and including the words "under the provisions" to the end of the section. In section 85, from and including the words "under the provisions" to the end of the section.
VII of 1876 ...	An Act to provide for the registration of revenue-paying and revenue-free lands, and of the proprietors and managers thereof.	In section 42, from and including the words "under section" to the end of the section.
VIII of 1876 ..	An Act to make better provision for the partition of estates.	In section 138, from and including the words "under section" to the end of the section.
VII of 1878 ...	An Act to consolidate and amend the law relating to the Excise revenue in the Presidency of Fort William in Bengal.	In section 36, from and including the words "or by the process" to the end of the section.
IX of 1879 ...	An Act to amend the law relating to the Court of Wards. <i>Regulations of the Bengal Code.</i>	Section 62.
III of 1794 ...	A Regulation for exempting proprietors of land (with certain exceptions) from being confined for arrears of revenue: and for prescribing the process by which tehsildars are to demand payment of arrears; and for enabling the Collectors to recover from Native officers employed under them public money or papers which they may embezzle or retain, &c.	Section 12. Sections 16, 17, 18, 19 and 20, so far as they relate to the recovery of money belonging to Government.

SECOND SCHEDULE.

FORM No. 1 (See Section 5).

*Certificate of arrears of revenue filed in the office of the Collector of the district of
(Name of District).*

No. of certificate.	Name of debtor.	Address of debtor.	Amount of arrears of revenue for which this Certificate is made, and period for which such arrears are due.	Estate or tenure for which arrears of revenue due.

I hereby certify that the above-mentioned sum of Rs. _____ is due to the
Secretary of State for India in Council from the above-named
Dated this _____ day of _____ 18 ____ A. B.,
Collector of _____

FORM. No. 2 (see Sections 7 and 9).

*Certificate of arrears of public demands filed in the office of the Collector of the
District of (name of District).*

No. of certificate.	Name of debtor.	Address of debtor.	Amount of the public demand for which this certificate is made.	Particulars of public Demand for which this certificate is made and public officer [or manager, <i>adn</i> of what estate] to whom due.

I hereby certify that the above-mentioned sum of Rs. _____ is due to the
Secretary of State for India in Council [or to A. B., a Ward of Court, or a
minor, or a lunatic, by his next friend O. D.] from the above-named
Dated this _____ day of _____ 18 ____ A. B.,
Collector of _____

FORM No. 3 (See section 9).

NOTICE OF DEMAND.

To the Collector of the District of

Name of debtor.	Address of debtor.	Amount of public demand for which this notice is given.	Nature of the public Demand for which this notice is given.
.	.	.	.

The above sum of Rs. . is due from the said
in respect of
Certified this . day of

A. B.

FORM No. 4 (See section 10).

NOTICE.

* To (insert name of judgment-debtor).

You are hereby informed that a certificate for Rs. ., due from you on account of ., has been this day made by me against you under the provisions of section . of Act . of 1880, passed by the Lieutenant-Governor of Bengal in Council, and that such certificate has been filed in this office. If you deny your liability to pay the said sum of Rs. ., you may within thirty days show cause why such certificate should not be executed. If you fail to show cause within thirty days, or do not show sufficient cause, such certificate will be executed in the same manner as if it were a decree of a civil court for the said sum of Rs. . unless you pay the amount into this office. Until such amount is paid, you are hereby prohibited from alienating your immovable property or any part of it by sale, gift, mortgage or otherwise.

A copy of the certificate above-mentioned is hereto annexed.

Dated this . day of . 18 . A. B.,

Collector of

FORM No. 5 (See section 12).

To

THE COLLECTOR OF THE DISTRICT OF .

The humble petition of (name of petitioner) of (address).

SHREWETH—

That a certificate No. . for the sum of Rs. . has been filed against your petitioner in your office under the provisions of section . of Act . of 1880 passed by the Lieutenant-Governor of Bengal in Council.

That your petitioner respectfully denies his liability to pay the said sum

of Rs. (or, where the liability to pay part is admitted, denies his liability to pay more than Rs.), and this for the following reasons :—

That the facts above stated are true to the best of your petitioner's knowledge and belief.

Your petitioner therefore respectfully prays that the said certificate may be set aside (or modified or varied).

PART VIII.

CESSES (BOND AND PUBLIC WORKS).

ACT IX (B. C.) OF 1880 (AS AMENDED BY ACT II B. C. OF 1881).

ACT No. IX OF 1880.

(AMENDED BY ACT II OF 1881 B. C.) PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

(Received the assent of the Lieutenant-Governor on the 10th September 1880, and of the Governor-General on the 1st October 1880).

An Act to amend and consolidate the law relating to rating for the construction, charges and maintenance of district communications and other works of public utility, and of provincial public works.

Whereas it is expedient to amend and consolidate the law relating to rating for the construction, charges and maintenance of district roads and other means of communication, and of provincial public works, within the territories administered by the Lieutenant-Governor of Bengal, and to the levy of a road cess and a public works cess on immovable property situate therein, and to the constitution of local committees for the management of the proceeds of the said road cess, and also to provide for the construction and maintenance of other works of public utility out of the proceeds of the said road cess: It is hereby enacted as follows:—

PRELIMINARY.

1. This Act may be called "The Cess Act, 1880;" and it shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General.

2. This Act shall take effect at once in every district and part of a district in which Bengal Act X of 1871 (*an Act to provide for local rating for the construction and maintenance of roads and other means of communication*), and Bengal Act II of 1877 (*an Act to provide for the levy of a cess for the construction charges and maintenance of provincial public works*) may be in force on the date of the commencement of this Act;

The Lieutenant-Governor may, by notification in the *Calcutta Gazette*, extend its provisions to any other district or part of a district situate in the territories for the time being administered by him, and this Act shall take effect accordingly therein from the date specified in such notification;

Provided that nothing herein contained shall be deemed to effect any immovable property within the limits of the ordinary original jurisdiction of the High Court of Judicature at Fort-William in Bengal or within the limits of any first or second class municipality under the Bengal Municipal Act, 1876.

The Lieutenant-Governor may, by notification in the *Calcutta Gazette*, exempt any district or part of a district, or any estate or tenure, from the operation of this Act, or from the operation of so much thereof as relates to the road cess, or as relate to the public works cess, and may at any time, by a similar notification, revoke such exemption.

3. The said Bengal Act X of 1871 and the said Bengal Act II of 1877 are hereby repealed; but this repeal shall not affect the past operation of such Acts, or anything duly done or suffered, or any right, privilege, obligation, or liability acquired, accrued, or incurred thereunder;

And all rules, orders, appointments, and valuations in force at the commencement of this Act which were made under the said Acts, shall, so far as they are consistent with this Act, be deemed to have been made under this Act;

And all cesses which were imposed under the said Acts shall be deemed to have been imposed under this Act, and every sum due to the Collector in respect of arrears of cess, of expenses incurred, of fees or costs payable, of notices

served, or of fines imposed under either of the said Acts, shall be deemed to be due on such accounts under this Act;

And all cases so imposed and every sum so due may be levied as herein provided.

4. In this Act, unless there be some thing repugnant in the subject or context—

“Annual value of any land, estate, or tenure” means the total revenue or rent which is payable, or if no revenue or rent is actually payable, would on a reasonable assessment be payable during the year by all the cultivating raiyats of such land, estate, or tenure, or by other persons in the actual use and occupation thereof;

“Commissioner” means the Commissioner of the division;

“Cultivating raiyat” means a person cultivating land and paying rent therefor not exceeding one hundred rupees per annum:

Explanation.—When rent is payable in kind, the money value thereof shall, for the purposes of this Act, be taken to be the annual value of the landlord's share of the crop calculated on an average of the three years next preceding any valuation or revaluation under this Act:

“District” means the local area to which a Collector is appointed, and no lands situate beyond the limits of such local area shall be deemed to form part of a district by reason of their forming part of an estate paying revenue to the Collector thereof:

“Estate” means (1) land included under one entry in the general registers of revenue-fee lands prepared and maintained by the Collector of a district under the “Land Registration Act, 1876,” or any similar law for the time being in force;

(2) any land other than the holding of a cultivating raiyat, the revenue or rent of which may be payable directly to the Collector or any person specially appointed by him to collect the same:

(3) any land acquired under any rules issued by, or under authority of, Government for the sale, grant, lease or clearance of waste lands:

“Holder of an estate or tenure” means all or any of the holders thereof, and where two or more persons are jointly holders thereof; they shall be jointly and severally liable under this Act:

“Holding” means the land held by a cultivating raiyat;

“Immovable property” includes lands and all benefits to arise out of land and things attached to the earth, or permanently fastened to anything which is attached to the earth, but does not include crops of any kind, or houses, shops or other buildings:

“Land” means land which is cultivated, uncultivated, or covered with water, and does not include houses or buildings:

“Part,” “chapter,” and “section” mean respectively a part, chapter, and section of this Act:

“Schedule” means a schedule to this Act annexed, and every such schedule shall be read as part of this Act:

“Tenure” includes every interest in land, whether rent-paying or not, save and except an estate as above defined, and save and except the interest of a cultivating raiyat:

“The Collector” includes any person specially invested with the powers of a Collector for the purposes of this Act, and means—

I.—When used in reference to revenue-paying estates and lands comprised therein, to all proceedings connected therewith, and to the assessment and levy of cesses in respect thereof,

the Collector or other similar officer on whose revenue-roll such estates are borne.

II.—When used in reference to revenue-free estates and lands comprised therein, to all proceedings connected therewith, and to the assessment and levy of cesses in respect thereof,

the Collector or other similar officer on whose general register of revenue-free lands such estates are borne :

“The Collector of the district” includes any person specially invested with the powers of a Collector for the purposes of this Act, and means the officer in charge of the revenue administration of a district :

“The committee” means the district road committee of any district :

“Year” means the cess year as determined by the Lieutenant-Governor under section 11.

PART I.

CHAPTER I.—*Imposition and application of the cesses.*

5. From and after the commencement of this Act in any district or part of a district all immovable property situate therein, except as otherwise in sections 2 and 8 provided, shall be liable to the payment of a road cess and a public works cess.

6. The road cess and the public works cess shall be assessed on the annual value of lands and on the annual net profits from mines, quarries, tramways, railways, and other immovable property, ascertained respectively as in this Act prescribed ; and the rates at which such cesses respectively shall be levied for each year shall be determined for such year in the manner in this Act prescribed ;

Provided that the rate at which each such cess shall be levied for any one year shall not exceed the rate of one-half anna on each rupee of such annual value and annual net profits respectively.

7. Nothing in this Act contained shall be deemed to require the payment by the Lieutenant-Governor of Bengal, from the public revenues, of any sum as road cess in excess of such sums as may have been paid as such cess to the Collector by persons liable to pay the same.

8. No railway or tramway, the property of the Government of India, and no railway or tramway of which the dividend is guaranteed by Her Majesty's Secretary of State for India in Council, or by the Governor-General of India in Council, or by the Lieutenant-Governor of Bengal, shall be liable to road cess or public works cess under the provisions of this Act without the previous consent of the Governor-General of India in Council.

9. The proceeds of the road cess in each district shall be paid into the district road fund of such district, as hereinafter provided, and, together with other assets of such fund, shall be applied to the purposes mentioned in section 109.

10. The proceeds of the public works cess and all interest paid thereon shall be paid into the public treasury, and shall be applied (1) to the payment of such contributions to the district road fund as the Lieutenant-Governor may think proper in consideration of the said cess being assessed and collected jointly with

the road cess by establishments paid from the district road fund; and (2) to the construction charges and maintenance of provincial public works, and to the payment of interest on capital which may have been expended, or which may hereafter be expended, on such works in such manner as the Lieutenant-Governor may direct.

11. The Lieutenant-Governor shall, by an order published in the *Calcutta Gazette*, fix the date from which the cesses leviable under this Act in any district or part of a district shall take effect therein, and may fix and from time to time alter the date from which the cess year shall run in any district or part thereof.

PART II.

MODE OF ASSESSMENT

CHAPTER II.—Valuation of Lands.

12. Upon the commencement of this Act in any district or part of a district the Lieutenant-Governor may order that a valuation shall be made of such district or part of a district,

and from time to time after the expiration of the term of five years from the beginning of the year in which the levy of the cesses took effect in accordance with any such valuation, or with any revaluation as hereafter provided in this section, or at any time within twelve months previous to the expiration of such term,

the Lieutenant-Governor may, if he think fit, order that a re-valuation shall be made of any such district or part of a district, and such re-valuation shall take effect from the beginning of such year as the Lieutenant-Governor may direct.

13. Whenever the term of five years shall have expired from the beginning of the year in which the levy of the cesses took effect in any estate or tenure in accordance with any valuation or re-valuation under this Act or Bengal Act I of 1871, the holder of any such estate or tenure may apply to the Collector to revise his estate or tenure, and for such purpose shall lodge in the office of the Collector returns in the form in Schedule (A) contained; and thereupon the Collector shall proceed to revalue such estate or tenure, and if he make any alteration in the valuation of any such tenure, shall give notice of such alteration to the holder of the estate or superior tenure in which such tenure is included, and shall alter the valuation of such estate or superior tenure accordingly,

Provided that no re-valuation or reduction of the amount of cesses previously payable in respect of any estate or tenure, in consequence of a revaluation under this section, shall take effect until the beginning of the year commencing next after such re-valuation, unless the application for re-valuation shall have been made, and the necessary returns lodged in the Collector's office within three months after the beginning of a year, in which case such re-valuation and reduction, if any, shall take effect from the commencement of such year.

14. Whenever the Lieutenant-Governor has ordered that a valuation or a re-valuation of any district or part of a district shall be made for the purposes of this Act, the Collector of the district shall cause a proclamation to be issued requiring every holder of an estate or tenure which is liable to pay an annual amount of revenue or an annual amount of rent exceeding one hundred rupees, and every holder of a revenue-free estate or rent-free tenure the gross annual

rental of which exceeds one hundred rupees, severally to lodge at the office of such Collector within one month a return of all lands comprised in his estate or tenure in the form in schedule (A) contained, giving the particulars in such form set forth.

The Collector of the district shall cause such proclamation to be published by affixing a copy thereof in some conspicuous place in the office of such Collector, in every civil court, in every police station, and in the office of every sub-divisional officer within the district, and in any other manner which the Lieutenant-Governor may from time to time direct.

15. At any time at which the Lieutenant-Governor might order a re-valuation of a district or part of a district to be made as provided by section 12, he may, if he think fit, instead of so ordering, make an order that particular estates or tenures only in such district or part of a district shall be re-valued.

16. Whenever any proclamation has been published, as mentioned in section 14, in any district, and whenever the Lieutenant-Governor has made an order, under the last preceding section, that a re-valuation of particular estates and tenures only shall be made, the Collector shall cause a notice to be served in respect of every estate and tenure which is to be valued or re-valued, and in respect of which no return shall have been lodged in accordance with the requirement of such proclamation, requiring every holder of such estate or tenure severally to lodge at the office of the Collector the return mentioned in section 14; and shall also cause a similar notice to be served in respect of every tenure included in any such estate or tenure which may have been named in any return lodged in pursuance of the provisions of this Act, or of Bengal Act X of 1871, either for the purposes of the valuation or re-valuation then contemplated, or for the purposes of any previous valuation or re-valuation, or of which the existence may in any other way have come to his knowledge.

17. The notice mentioned in the last preceding section shall be in the form No. I in Schedule (B) contained, or in the form No. II in the said Schedule contained, as the case may be, and shall require every holder of the estate or tenure severally to lodge the return within the time specified below, viz.—

In the case of revenue-paying estates and rent-paying tenures.

If the return relate to an estate or tenure which is liable to the payment of annual revenue or of rent not exceeding Rs. 500, or to any share or interest in such estate or tenure.

Within six weeks of the service of the notice.

If the return relate to any other estate or tenure, or to any share or interest therein.

Within three months of the service of the notice.

In the case of revenue-free estates and rent-free tenures.

If the return relate to any estate or tenure of which the gross annual rental does not exceed Rs. 500, or to any share or interest in such estate or tenure.

Within six weeks of the service of the notice.

If the return relate to any other estate or tenure, or to any share or interest therein.

Within three months of the service of the notice.

The Collector may in his discretion extend the time allowed for lodging any such return.

18. All holders of estates or tenures in respect of which such notice has

been served who shall, without sufficient cause being shown to the satisfaction of the Collector, refuse or omit to lodge the required return in the office of such Collector within the time allowed by such notice in respect of the estate or tenure which they hold, or within any extended time which may have been allowed by the Collector for lodging such return, shall be severally liable to a fine which may extend to fifty rupees for every day after the expiration of such time or extended time until such return is furnished, or until the value of the lands comprised in their respective estates and tenures shall have been otherwise ascertained and determined by the Collector as hereinafter provided.

The amount of such fine accruing due from time to time may be levied by the Collector as provided in section 98 or 99, and the fact of an appeal against such fine being pending shall not avail to prevent the levy of any such fine pending the disposal of the appeal, unless the Commissioner shall otherwise direct.

Whenever the amount levied in respect of any such fine exceeds five hundred rupees, the Collector shall report the case specially to the Commissioner; and no further levy for such default shall be made otherwise than by authority of the Commissioner.

19. From and after the expiry of the time allowed by the notice, or of any extended time under the provisions of section 17, every holder of an estate or tenure in respect of which such notice has been served shall be precluded from suing for or recovering rent for any land or tenure situate in any estate or tenure in respect of which no return has been lodged as aforesaid.

The Collector may send a list to the civil court of all such holders so making default in lodging returns as aforesaid, and such court shall take judicial notice of the same.

Whenever the required return is lodged in respect of any estate or tenure, or whenever the valuation of any such estate or tenure has been otherwise completed, the disability imposed on the holder thereof by this section shall cease; and if such estate or tenure shall have been included in any list as aforesaid, the Collector shall forthwith give notice to the civil court of the cessation of such disability.

20. Every holder of an estate or tenure in respect of which a return has been made as required by this chapter shall be precluded from suing for or recovering—

(a) any rent whatsoever for any land, holding or tenure forming part of the estate or tenure to which such return relates, but which has not been mentioned in such return, unless it be proved that the holding or tenure for the rent of which the rent is claimed was created subsequently to the lodging of such return;

(b) rent at any higher rate than is mentioned in such return for any land, holding or tenure included in such return, unless it be proved that the rent of such land or tenure has been lawfully enhanced subsequently to the lodging of such return;

Provided that the Collector may, at his discretion, at any time within six months from the presentation of any return made under this part, receive a petition correcting any such return; and on the acceptance of such petition may make such correction in the valuation of the estate or tenure as may be required; and as soon as the person in respect of whose estate or tenure the return and valuation have been so corrected shall have paid in all sums due by him as road cess and public works cess in accordance with such corrected valuation, and not otherwise, such person may recover such rent as may be due to him on any tenure or land included in the return of such estate or tenure at any rate not being in excess of the rate shown in the corrected return as payable in

respect of such tenure or land. Such notices as the Collector may direct shall be served upon the parties affected by such petition at the expense of the person lodging the return as aforesaid.

21. If no return shall have been lodged in respect of any lands for which notice under section 16 has been issued, the Collector may, after the expiration of the time allowed by the notice, or of such extended time as is mentioned in section 17, ascertain and fix by such ways and means as to him shall seem expedient, the annual value of any estate, tenure or lands mentioned in such notice; and all expenses incurred in making such valuation may be recovered with all costs of recovery thereof as provided in sections 98 and 99.

22. Whenever the maker of any return under this Act has been convicted on a prosecution under section 94 of making a false return relating to any lands, the Collector may, by such ways and means as to him shall seem expedient, ascertain and fix the annual value of such lands; and the expense of such valuation may be recovered from the maker of such return as provided in sections 98 and 99.

23. Whenever the Collector may deem that any return lodged relating to lands for which no rent is payable by cultivating raiyats to the person making such return is untrue or incorrect, he may, whether any prosecution as mentioned in section 94 shall have been instituted or not, by such ways and means as to him shall seem expedient, ascertain and fix the annual value of such lands; and in case the annual value of such lands so determined by him shall exceed by one-fifth the value stated in such return, the expense of such valuation may be recovered from the person by whom such return was lodged, as provided in sections 98 and 99, and in all other cases the said expense shall be borne by the district road fund.

24. The Collector may, whenever he may think fit, cause a notice in the form No. I in Schedule (B) contained to be served on any person holding any lands or possessing any interest therein, although such person may have been mentioned in any return as a cultivating raiyat; and thereupon such person shall be bound to make a return of the annual value of such lands within one month from the service of such notice in the form in Schedule (A) contained, and the provisions of sections 17 and 18 regarding extension of time for lodging a return and regarding fines respectively shall be applicable to such person.

25. If no return is made by any person on whom a notice has been served as provided in the last preceding section, the Collector may proceed by such ways and means as to him shall seem expedient to ascertain the annual value of the lands held by such person; and in case it appears that such annual value greater than the rent paid by such person, the expense of such valuation shall be borne by such person and may be recovered with all costs of recovery thereof as provided in sections 98 and 99, but all other cases shall be borne by the district road fund.

26. If it shall appear to the Collector that any person on whom a notice has been served under section 24 has been wrongly classed in the return as a cultivating raiyat, the Collector may direct that the entry be corrected and that such person be classed as a tenure-holder; and thereupon such person shall be deemed to be a tenure-holder for the purposes of the assessment and levy of the cesses in respect of the lands held by him.

27. Whenever the revenue annually payable in respect of any estate, or the rent annually payable in respect of any tenure does not exceed the sum of one hundred rupees, the Collector may without issuing any notice for such estate or tenure—

(a) in any case, determine the annual value of the land comprised therein

to be in a permanently settled estate or tenure, a sum not exceeding three times, and in a temporarily settled estate or tenure, a sum not exceeding twice the amount of the annual revenue or rent payable therefore; or

(b) when the area of the said estate or tenure has been ascertained, determine the annual value of such estate or tenure to be at such rate per acre as to him shall seem fit.

28. When the area of any revenue-free estates or rent-free tenure, the gross rental of which does not exceed, or is not estimated by the Collector to exceed, the sum of one hundred rupees has been ascertained, the Collector may, without issuing any notice for such estate or tenure, determine the annual value of such estate or tenure to be at such rate per acre as to him may seem fit.

29. When the land contained in any estate or tenure has been summarily valued by the Collector in the manner provided by clause (a) of section 27, the annual value of any portion of such land which is comprised within a tenure subordinate to such estate or tenure shall be determined according to the following rules:—

(1)—When the subordinate tenure comprises the whole of the estate or superior tenure, the annual value of the subordinate tenure shall be taken to be the same as that of the estate or superior tenure.

Example.—An estate paying a revenue of Rs. 80 is summarily valued by the Collector under clause (a) of section 27 at Rs. 200. The whole estate is let in patni for a rent of Rs. 120. The annual value of the patni tenure will be Rs. 200.

(2)—When the subordinate tenure comprises a part only of the land constituting the estate or superior tenure—

(a) The difference between the annual value of the estate or superior tenure, and the revenue or rent payable in respect of such estate or superior tenure shall first be ascertained;

(b) Next, the ratio which such difference bears to such revenue or rent shall be ascertained;

(c) Then the amount which bears the same ratio to the rent payable in respect of the subordinate tenure shall be ascertained;

(d) Half of the amount so ascertained shall be added to the rent payable in respect of the subordinate tenure, and the result shall be taken to be the annual value of the subordinate tenure.

Example A.—An estate paying revenue of Rs. 60 is summarily valued by the Collector under clause (a) of section 27 at Rs. 100. A part only of the estate is let in patni for a rent of Rs. 37-8.

The difference between the annual value of the estate (Rs. 100) and the revenue paid in respect of it (Rs. 60) is Rs. 40. This difference bears a ratio of two-thirds to this revenue (Rs. 60).

The amount which bears the same ratio (two-thirds) to the rent payable in respect of the patni (Rs. 37-8) is Rs. 25;

add half of Rs. 25 to the rent payable in respect of the patni tenure, and the result (Rs. 37-8 + Rs. 12-8 =) Rs. 50 will be the annual value of the patni tenure.

Example B.—Within the patni tenure paying a rent of Rs. 37-8, as in example A, is a darpatni tenure paying a rent of Rs. 27.

The difference between the annual value of the patni tenure ascertained as above (Rs. 50) and the rent payable in respect of the patni (Rs. 37-8) is Rs. 12-8, which bears a rate of one-third to the said rent.

The amount which bears the same ratio (one-third) to the rent payable in respect of the darpatni (Rs. 27) is Rs. 9;

add half of Rs. 9 to the rent payable in respect of the darpatni, and the result (Rs. 27 + Rs. 4-8 =) Rs. 31-8 will be the annual value of the darpatni tenure.

30. When the land contained in any estate or tenure has been summarily valued according to a rate per acre, under clause (b) of section 27 or under

section 28, the annual value of the land comprised in any subordinate tenure shall be taken at the same rate per acre as that of the estate or superior tenure.

31. The holder of any estate or tenure which has been summarily valued under section 27 or 28 may, within one month from the posting of the valuation roll in respect thereof under section 35, lodge a return in the form in Schedule (A) contained in regard to such estate or tenure, and thereupon such return shall be deemed to be a return made as required by section 16 and shall be dealt with accordingly.

32. Instead of proceeding to value any estate or tenure summarily under the provisions of section 27 or 28, the Collector may, if he think fit, cause a notice to be served in respect of any such estate or tenure in the form No. I in Schedule (B) contained, or in the form No. II in the said schedule contained, as the case may be, and thereupon all the provisions of this part shall apply in the same way as they would have applied if the annual Government revenue or rent payable in respect of such estate or tenure had exceeded one hundred rupees.

Lands used for Tea, Coffee, or Cinchona.

33. In the case of lands acquired under any rules issued by, or under the authority of, the Government for the sale, lease, grant or clearance of waste lands, or held directly from Government, and used for the cultivation of tea, coffee, or cinchona, the Collector shall, in lieu of the notice prescribed by section 16, cause a notice to be served calling on the holder of such lands to lodge within two months of the service of such notice, a return in the form in Schedule (C) contained, giving the particulars in such form set forth; and the annual value of such lands shall be fixed at ten rupees in respect of every acre therein entered as cultivated, unless the Board of Revenue shall in any particular case prescribe a lower rate. The provisions of sections 18 and 21 shall apply to all lands in respect of which a notice has been issued under this section.

Publication of valuation rolls and duration of valuations.

34. Whenever any valuation or re-valuation is made under this part, the Collector shall cause to be prepared from the returns furnished to him and from the valuations made by him in accordance with this Act a valuation-roll of each estate within his district and of the tenures therein comprised, noting thereon for each estate the amount of revenue annually payable to Government on which the deduction specified in section 41 is to be calculated.

On the application of any holder of an estate or tenure or holding, and on payment of such copying fee as the Board of Revenue shall from time to time determine, the Collector shall cause to be furnished to such holder a copy or corrected copy of so much of any such returns, and of any such roll as relates to the lands included within his estate, tenure or holding.

35. On the completion of every roll prescribed under this part, the Collector shall cause a copy thereof to be posted up at the māl cutcherry of the estate to which such roll refers, and shall cause extracts of such portions of any such roll as refer to any tenure to be posted up at the māl cutcherry of such tenure;

Provided that, if no such māl cutcherry be found, such roll and such extracts shall be posted up at some conspicuous places on the estate and tenures respectively to which they refer, and that if such estate or tenure cannot be found, such roll and such extracts shall be posted at some conspicuous place in any village in which such estate or tenure is believed to be situate.

The person who is entrusted with the publication of any such return shall obtain an acknowledgment in writing signed by two persons who may be either respectable residents of the neighbourhood, or chowkidars, or other officers of Government, to the effect that such return was duly published on the spot, and shall give in such acknowledgment to the Collector.

36. Except as otherwise in this part expressly provided, every valuation and re-valuation made under this chapter shall remain in force for the term of five years from the date fixed by the Lieutenant-Governor under section 12 as the date from which the cess leviable in pursuance thereof shall take effect, and thereafter, until another re-valuation and assessment in substitution thereof shall have been ordered and completed.

37. Nothing in section 36 contained shall be held to debar the Collector, with the sanction of the Board of Revenue from making at any time any reduction which he may think fit in the valuation of any estate or tenure;

or from making a valuation of and assessing and levying cess under the rules laid down in this part upon any estate or tenure which for any reason whatever has been omitted from the valuations and assessments for the time being in force, or which was not in existence when such valuation or assessment was made.

CHAPTER III.—*Rating and levy of the cesses.*

38. The road cess for each year shall be assessed and levied in each district as provided in section 6, and, subject to the maximum rate in that section mentioned, at such rate as may be determined for such year by the Committee of such district with the approval of the Commissioner under section 150 or 151, or with the approval of the Lieutenant-Governor under section 153, as the case may be, or at such rate as the Lieutenant-Governor may order under section 153.

39. The public works cess for each year shall be assessed and levied in each district as provided in section 6, and, subject to the maximum rate in that section mentioned, at such rate as the Lieutenant-Governor may determine for such year.

40. When the rate of road cess and public works cess to be levied in any district shall have been determined for any year and published in the *Calcutta Gazette* as provided in section 155, the Collector of the district

shall cause the rate so determined to be published by affixing a notification in some conspicuous place in the office of the said Collector, in every civil court, in every police-station, and in the office of every sub-divisional officer within the district,

and shall cause such rate to be proclaimed by beat of drum throughout the district,

and shall cause to be served on the holder of every estate within the district a notice showing the amount of road cess and public works cess payable in respect of his estate, and specifying the date from which such road cess and public works cess will take effect;

Provided that it shall not be necessary to serve such notice when no change has been made in the valuation of the estate or in the rate of road cess or public works cess since the issue of the last notice under this section.

40A. Notwithstanding anything in the definitions of "estate" and "tenure" in section 4 or elsewhere in this Act contained, the Board of Revenue may direct that any land (other than the holding of a cultivating raiyat) of which rent or revenue is payable directly to the Government as proprietor thereof, shall, for the purposes of this Part, be deemed to be a tenure and not an estate, and that the Government shall be deemed to be the holder of the estate within

which such tenure is included, and thereupon the Collector may recover any sum payable from such tenure under the provisions of this Act, in the same manner and under the same penalties as if the same to be arrears of rent or revenue to him. (Act II of 1881 B. C.)

41. Except as otherwise in this Act provided—

(1)—Every holder of an estate shall yearly pay to the Collector the entire amount of the road cess and public works cess calculated on the annual value of the lands comprised in such estate, at the rate or rates which may have been determined for such cesses respectively for the year as in this Act provided, less a deduction to be calculated at one-half of the said rates for every rupee of the revenue entered in the valuation-roll of such estate as payable in respect thereof ;

(2)—Every holder of a tenure shall yearly pay to the holder of the estate or tenure within which the land held by him is included, the entire amount of the road cess and public works cess calculated on the annual value of the land comprised in his tenure at the rate or rates which may have been determined for such cesses respectively for the year as in this Act provided, less a deduction to be calculated at one-half of the said rates for every rupee of the rent payable by him for such tenure ;

(3)—Every cultivating raiyat shall pay to the person to whom his rent is payable one-half of the said road cess and public works cess calculated at the said rate or rates respectively upon the rent payable by him, or upon the annual value ascertained under the provisions of section 24 or 25 of the land held by him.

42. (1)—Every holder of a revenue-paying estate shall pay the amount of road cess and public works cess due by him in equal instalments on the several days fixed "*under the provisions of section 3 of Act XI of 1859, or of any similar Act at the time being in force for the payment of arrears*" of revenue due in respect of his estate, or, if such revenue be payable in one annual sum, then on the day fixed for the payment of such sum.

(2)—Every holder of a revenue-free estate shall pay the amount of road cess and public works cess due by him in two equal instalments or in one annual payment upon such days or day as shall be for that purpose appointed by any order of the Lieutenant-Governor.

(3)—Every holder of a rent-paying tenure and every cultivating raiyat shall pay the amount of road cess and public works cess due by him in instalments in the proportion of the instalments of rent payable in respect of the tenure or holding of such tenure-holder or raiyat ;

Provided that in cases in which, according to local usage or to terms of any agreement, no part of such rent falls due before the end of the year on account of which it is payable, the tenure-holder or raiyat shall pay the amount of road cess and public works cess due by him in two equal instalments upon such days as shall be for that purpose appointed by any order of the Lieutenant-Governor.

43. In case of partition of an estate being effected under Regulation XIX of 1814, or Bengal Act VIII of 1876, or any similar Act, after valuation of such estate and while such valuation remains in force, the total valuation of the original estate shall be distributed proportionately "*to the land revenue*" under the order of the Collector over the newly-formed estates, whereupon the newly-formed estates shall, for the purposes of this Act, take the place of the original estate, the liability to pay cess in respect of each newly-formed estate being separate and distinct from the liability to pay cess in respect of any other of such newly-formed estates.

Such separate liability shall take effect from the same date as the separate liability of the newly-formed estates respectively in respect of land-revenue.

The procedure prescribed by sections 34 and 35 shall be followed whenever

a redistribution of the valuation is made in consequence of a partition as mentioned in "this" section.

44. When a recorded sharer of a joint revenue-paying estate has opened a separate account under Act XI of 1859, or under section 70 of Bengal Act VII of 1876, or any similar law for the time being in force for the regulation of the opening and maintaining of such separate accounts, he shall be entitled, in regard to the payment and realization of road cess and public works cess under this Act, to all the advantages of separate liability enjoyed by him under the said Act XI of 1859, and Bengal Act VII of 1876, in regard to the payment and realization of revenue, and shall be entitled to separate assessment and to the issue of separate notices under this Act from the date on which such advantages shall take effect in respect of the demand of Government revenue.

(2)—Whenever any such separate account is opened after the valuation of an estate, and while such valuation remains in force, the Collector shall issue a notice on the holders of the shares severally, in respect of which the accounts are to be kept separately, informing them that unless any objection is preferred to the Collector within one month of the service of such notice, the amount of the cesses which the whole estate is liable to pay according to the existing valuation will, from the date on which such separate accounts were opened, be apportioned among such shares severally in proportion to the amount of Government revenue for the payment of which each such share is entered in the separate accounts as being liable. Such notice shall specify such proportionate amount.

(3)—If no such objection be preferred within the time specified, such proportionate amount shall be the amount of the cesses for which the respective holders of such several shares are primarily liable as mentioned in section 13 of Act XI of 1859, subject, however, to the general responsibility of the holders of the entire estate as mentioned in section 14 of the said Act, if the amount of the cesses due on account of any such share cannot be recovered as provided in sections 98 and 99 of this Act from the holders of such share.

(4)—If any such objection shall be preferred as aforesaid, the total amount of the cesses for which the whole estate is liable according to the existing valuation shall be apportioned among the several shares in respect of which such separate accounts are opened in proportion to the annual value of such shares respectively under such rules or special instructions, not being inconsistent with this Act, as may be issued by the Board of Revenue; and the holders of such several shares shall be primarily liable as aforesaid for the payment of the amount of the cesses so apportioned on their shares respectively.

(5)—Whenever the separate account of the revenue payable in respect of any share or portion of an estate, as mentioned in clause 1 of this section, shall be closed, the provisions of this section shall cease to have effect in respect of such share. (Act II of 1881 B. C.)

45. If any instalment of road cess or public works cess or part thereof payable to the Collector shall not be paid within fifteen days from the date on which the same becomes due, the amount of such instalment or part thereof may be recovered at any time within three years after it became due, with interest at the rate of twelve "and a half" per centum per annum calculated from the date on which such instalment became due, and with all costs of recovering the same.

46. (1)—In any district to which the Lieutenant-Governor may specially order that the provisions of this section shall be extended, it shall be lawful for the Collector to keep a separate account in respect of the amount of cesses payable and paid by any holder of a revenue-free estate who is recorded in Part I of the Collector's general register of revenue-free lands as proprietor or manager of any specified share or interest in any specified share or interest in any revenue-free property.

(2)—Such separate account shall be opened and kept under such rules as to the levy of fees and other matters, and subject to such conditions and in such manner as the Board of Revenue may from time to time prescribe, and the Board of Revenue may at any time order that any separate account which has been so opened shall be closed from such time as they may direct, and no longer kept as a separate account.

(3)—As long as any separate account shall remain open as provided in the preceding "*clause*" and no longer, the joint liability of the holders of such revenue-free estate for payment of the entire amount payable in respect of such estate shall cease; and the Collector shall recover the amount of cess or other demand due in respect of each share or interest for which an account has been so separately kept from the holder or holders of such share or interest only; and, if the Collector shall think fit to proceed under section 99, he shall take action under that section against the share or interest only in respect of which the sum demanded is due and the rents thereof.

47. Every holder of an estate or tenure to whom any sum may be payable under the provisions of this Act may recover the same with interest at the rate of twelve and half per centum per annum in the same manner and under the same penalties as if the same were arrears of rent due to him.

48. Any shareholder in an estate or tenure who may have paid the road cess or public works cess payable in respect of such estate, tenure or any part thereof in excess of the amount proportionate to his own interest in such estate or tenure, may recover from his co-sharers such sums as he may have paid on account of their respective shares and interests, in the same manner and under similar penalties, or may take credit for such sums in any adjustment of accounts between himself and his co-sharers.

49. Whenever any shareholder in an estate who is recorded in the general register of revenue-paying and revenue-free lands maintained by the Collector, or whenever any shareholder in an estate the extent of whose share or interest in such estate is recorded in any other register kept up by the Collector of lands paying revenue or rent to the Collector direct, shall have paid the road cess or public works cess payable in respect of such estate, or any part thereof in excess of the amount proportionate to his own interest in such estate, he may, within fifteen days of such payment being made, move the Collector to make a certificate as provided by any law for the time being in force for the recovery of public demands, specifying the amount which has been paid in by such shareholder as cess in respect of the recorded share or interest of any other shareholder in the estate; and thereupon such Collector may, if he think fit, make such certificate, and such certificate shall have the same effect as a certificate made for the recovery of a public demand; and the same notices shall be issued and the same proceedings may be taken thereon by the Collector as in case of such certificate;

Provided that the person in whose favor the certificate has been made shall be deemed to be the decree-holder for the sum mentioned in the certificate; and all proceedings taken by the Collector for the recovery of the sums mentioned in the certificate shall be taken at the instance of the person in whose favor the certificate has been made and at his cost, and on his responsibility, and not otherwise;

Provided also that if any person against whom such certificate has been made shall object that the amount of the cesses for the recovery of which the certificate has been made is greater than the amount which the applicant for the certificate would recover from such person in a civil court as being equitably payable in respect of such person's share or interest in the estate, and if in the

opinion of the Collector there is probable ground for such objection, the Collector may, if he see fit, cancel such certificate, and leave the applicant to his remedy in the civil court.

CHAPTER IV.—*Valuation and assessment of lands held rent-free and payment and recovery of cess in respect thereof.*

50. All lands held without payment of rent other than lands mentioned in section 33, and other than estates entered on the general register of revenue-free lands of the district, shall, for the purposes of this Act, be deemed to form a part of any tenure within the local boundaries of which they are contained; and if they are not contained within the local boundaries of any tenure, then to form a part of any estates within the local boundaries of which they are contained; and if they are not contained within the local boundaries of any estate, then to form a part of the estate in which they were included at the original settlement of such estate; and if there be any doubt as to the estate in which they were so included, then to form a part of such conterminous estate as the Collector, in whose district such conterminous estate is situate, shall by an order under his seal appoint.

51. Every holder of an estate or tenure who is required by this Act to submit a return in the form in Schedule (A) contained, shall be bound to enter in such return all lands of the nature of those specified in section 50 according to the tenor thereof; and shall be bound to pay road cess and public works cess on the annual value of such lands at one-half of the rates fixed under this Act for the levy of such cesses respectively in the district generally for the year.

52. Whenever any lands held rent-free shall have been included in the return of any estate or tenure as provided in the last preceding section, the Collector shall, on publication of the valuation roll of such estate or tenure as provided in section 35, cause to be published a notice in the form in Schedule (D) contained, to which notice shall be annexed to such extracts from the valuation roll of such estate or tenure as relate to such lands.

Such publication may be lawfully made by affixing one copy of such notice and extracts at some conspicuous place in every village within which any such lands are situate,

by depositing another copy of the same at any police-station, registration office, or other Government office in the neighbourhood for the inspection of all concerned,

and by proclamation as herein next provided.

The proclamation shall be made by beat of drum throughout every such village, and shall be to the effect that such extracts have been so affixed and deposited, and that the owners and holders of such lands are required to inform themselves, by inspection of such extracts of the valuation put upon their lands, and to pay yearly to the holder of the estate or tenure in the return of which such lands are included, the cesses which shall be payable in respect of such lands under the provisions of this Act.

53. Within a reasonable time not exceeding thirty days after the issue of any process for the recovery of any sum due from him as cess under this chapter, the owner, holder, or occupier of any such land may make before the Collector an objection to the valuation of his land as entered in the valuation roll so published, and on such objection being made, the Collector shall, by such ways and means as to him shall seem expedient, ascertain and fix the annual value of the land in the possession of such owner, holder, or occupier, and may alter such roll accordingly, and shall give notice of any such alteration to the holder of the estate or tenure to which such roll relates.

Provided that nothing in this section shall be taken to authorize the Collector to alter any return so as to show any area of land as held rent-free which the maker of such return can show to be accounted for by him in the return as rent-paying land.

54. In the following cases, that is to say—

(1) whenever a new valuation or re-valuation takes effect in any district or part of a district;

(2) whenever the rate fixed for the levy of the road cess or of the public works cess in any year is changed from the rate at which such cess was levied in the preceding year; and

(3) whenever the dates fixed by the Lieutenant-Governor under section 57 for payment of instalments of the cesses by holders of rent-free land are changed, the holder of every estate or tenure to whom any cesses are payable in respect of lands held free of rent shall cause a notice to be published in every village in which any such lands are situate, informing all concerned of the rate which has been fixed for the levy of such cesses respectively; and requiring every owner and holder of any such land of which the cesses are payable to the person who causes the notice to be published to pay the amount of the cesses specified in such notice as it falls due, until a similar notice of change of the amount shall be given.

Such notice shall contain the following information in respect of each tenure and holding of rent-free land which is entered separately in the Collector's valuation roll:—

- (1) a specification of the land in respect of which the cesses are payable;
- (2) the name of the owner, holder, or occupier of such lands, if known;
- (3) the annual value of such land as entered in the Collector's valuation roll;
- (4) the rate on each rupee of the annual value which has been fixed under the Act for the levy of the road cess and public works cess respectively for the year;
- (5) the amount of the cesses payable in respect of each tenure or holding, calculated at such rates; and
- (6) the dates fixed by the Lieutenant-Governor under section 57 for the payment of each instalment together with the amount of each instalment.

55. Publication of the notice above-mentioned may be lawfully made by affixing one copy of the same at some conspicuous place in every village in which any such land is situate;

by depositing another copy thereof to be available for general inspection at any māl cutcherry

of the estate or tenure in which such land is included, or at any other convenient place in the neighbourhood; and by proclamation as herein next provided.

The proclamation shall be made by beat of drum throughout such village, and shall be to the effect that such notice has been so affixed and so deposited, that it is open to inspection at the māl cutcherry or other convenient place as above-mentioned, and that every owner and holder of rent-free land is required to inform himself of the contents of such notice and to pay the amount of the cesses due by him accordingly.

56. After publication of the extracts from the roll as provided in section 52, and in cases in which publication of the notice mentioned in section 54 is required, after publication of such notice, and not otherwise, every owner and holder of any rent-free land included in such extracts and every person in receipt of the rents and profits or in possession and enjoyment of such land shall be

bound to pay year by year to the holder of the estate or tenure in the return of which such land has been included, the amount of the road cess and public works cess which may thereafter become due to such holder, calculated on the annual value of such land as entered in such extracts, or on any other annual value which may have been determined by the Collector under section 53, at the full rate or rates which may have been fixed under this Act for the levy of such cesses respectively in the district generally for the year.

57. The payment of the cesses for each year by the holder of any land which is held rent-free shall be made by two equal instalments, or in one payment, upon such days or day as shall be for that purpose fixed by the Lieutenant-Governor.

58. When an instalment of the cesses due on any rent-free land is not paid to the holder of the estate or tenure to whom it is due within one month of the date on which such instalment is payable, such holder shall be entitled to recover a sum equal to double the amount of such instalment due to him under sections 56 and 57, with interest on such sum calculated at the rate of twelve and a half per centum per annum from the date of which such instalment was payable, and with all costs of suit;

Provided that such holder shall have paid to the Collector all sums due to such Collector up to date in respect of road cess and public works cess, and not otherwise.

59. If the holder of any estate or tenure shall have omitted to enter in his return (whether such return was made under Bengal Act X of 1871, or under this Act) any rent-free land which he was bound to enter in such return, such holder may at any time after the passing of this Act give in to the Collector a supplementary return showing the necessary particulars in respect of the land so omitted in the form given in Part IV of Schedule A, and shall thereupon pay to the Collector the amount of the cesses which would have been payable by him to such Collector in respect of such land for the three years next preceding, or for any shorter period which may have elapsed since the estate or tenure was last valued.

60. Such supplementary return shall, to all intents and purposes, have the same effect as a return duly made under the provisions of section 51; and sections 51 to 56 (both inclusive) shall be applicable to and in respect of any rent-free land included in such supplementary return.

61. The provisions of sections 57 and 58 shall be applicable to every amount which, as provided in section 56, may become payable by the owner and holder of any such rent-free land to the holder of any such estate or tenure after the fulfilment of the requirements in sections 52, 53, and 54 contained.

62. The provisions of section 58 shall not be applicable to any such amount which may have become so payable under the provisions of Bengal Act X of 1871 or of this Act before the fulfilment of the requirements of the sections 52, 53, and 54; but when any instalment of cess which may have become payable before the fulfilment of such requirements has not been paid to the holder of such estate or tenure on the date on which such instalment was payable, the holder of such estate or tenure may recover the amount of such instalment, together with interest at the rate of twelve and a half per centum per annum on such amount, and with all costs of suit;

Provided that no holder of an estate or tenure shall recover any amount under the provisions of this section, unless he has paid to the Collector all sums which became payable by him to such Collector on account of road cess and public works cess, at any date within the year in which the amount sought to be recovered became payable to such holder of an estate or tenure.

63. As soon as the said requirements shall have been fulfilled in respect of

any such land which is included in any such supplementary return, every owner and holder of such land and every person in receipt of the rents and profits, or in possession and enjoyment of such land, shall be bound to pay the amount of the road cess and public works cess which may thereafter become due on such land to the holder of the estate or tenure, in the supplementary return of which such land has been included. Sections 56, 57, and 58 shall be applicable to the cesses so payable.

64. (1)—Every holder of an estate or tenure who has included any rent-free lands in any return made to the Collector in respect of his estate or tenure under the provisions of the Bengal Act X of 1871, and has paid to the Collector any cess payable under the said Act, or under the Bengal Act II of 1877, in respect of the said rent-free lands, may at any time after the commencement of this Act give in to such Collector an additional return in the form given in Part IV of Schedule (A).

(2)—Such additional return shall be deemed to be a supplementary return within the meaning of section 59, and from the date of the inclusion of any such lands in such additional return, the same consequences shall ensue, and the same rights and obligations accrue to the Collector and to the holder of such estate or tenure, and the same liabilities shall attach to the owner, holder, and occupier of such lands as would have attached to them respectively if such lands had been included in a supplementary return given in under section 59.

65. Whenever any occupier of land which is held rent-free by the owner thereof shall have paid any sum as cess due in respect of such land to any holder of an estate or tenure to whom such cess is payable, such occupier shall be entitled to deduct the sum so paid by him from the rent next thereafter payable by him to the owner of such land, until such sum is fully adjusted.

66. Notwithstanding anything in this chapter contained, the Collector may at any time cause a notice, as mentioned in section 16, to be served on the holder of any rent-free land which he shall consider not to have been entered in the return of any estate or tenure, in which such land ought to have been included under the provisions of section 51. Such notice shall require the holder of such land to lodge at the office of the said Collector a return in the form in Schedule (A) contained in respect of such land;

and on service of such notice, the provisions of this chapter shall no longer apply to such lands; but the same consequences shall ensue, and the same liabilities shall attach to the holder of such land as would have ensued and would have attached, if such lands had constituted a revenue-free estate.

If the Collector has reason to believe that any land in respect of which he determines to serve such notice has been included in the return of any estate or tenure, he shall give notice of his intention to the holder of such estate or tenure, and shall alter such return as may be requisite, and shall correct the valuation and assessment of such estate or tenure as may be required.

67. If within one year of the commencement of this Act no notice has been served as mentioned in section 66 on the holder of any rent-free land requiring him to lodge a return in the office of the Collector, and if such land has not been included in any extracts from the returns of estates and tenures published by the Collector under section 52 or other similar section, the holder of such rent-free land shall be bound within one month of the expiration of such year to give information of such omission to the Collector, together with a description of the said land, a specification of the village or villages within which it is situate, the area in each village, and the amount of rent payable to him thereupon;

Provided that no holder of rent-free land who at any time after the expiration of the time prescribed shall of his own motion and otherwise than after the

issue of any notice by the Collector in respect of his lands give such information to the Collector shall be liable to prosecution for omitting to give such information within the prescribed time.

68. On receipt of such information whether within the time prescribed or after the expiration thereof, the Collector may, by an order in writing, require such owner or holder to make a return of his land in the form in Schedule (A) contained, or, if the gross rental of such land does not exceed one hundred rupees, may order that such land shall be summarily valued under section 27 or section 28, and may proceed to make such valuation.

69. Every order made by a Collector under the last preceding section shall have the same effect and be followed by the same consequences as the issue of a notice by the Collector under section 66.

70. As soon as any rent-free land which had not previously been included in the valuation of any estate or tenure, has been valued by the Collector after the issue of a notice as provided in section 66, or after an order made under section 68, the holder of such land shall become liable to pay to the Collector the road cess and the public works cess due on such land, in accordance with such valuation, for the three years last preceding such valuation, at the full rates at which such cesses were respectively levied for each such year in the district generally, together with interest calculated at twelve and a half per centum per annum on each instalment from the date on which such instalment would have been payable if such valuation had been in force.

71. No owner or holder of rent-free land on whom a notice has been served by the Collector under section 66, or in respect of whose land an order has been made by the Collector under section 68, shall be liable to have the land to which such notice or order refers included in any return of an estate or tenure, or to pay any amount as road cess or public works cess otherwise than to the Collector or to some person appointed by him in that behalf, unless, on a revaluation of any estate or tenure being made, the Collector shall, by an order in writing, direct that for the future such land shall be included within such estate or tenure for the purposes of this Act;

and upon such order being made, the provisions of this chapter, in so far as they are applicable, shall apply to the assessment and payment of road cess and public works cess in respect of such land.

CHAPTER V.—*Valuation, assessment, and levy of cesses on mines, railways, and other immovable property.*

72. On the commencement of this Act in any district, and thereafter before the close of each year, the Collector of the district shall cause a notice to be served upon the owner, chief agent, manager or occupier of every mine, quarry, tramway, railway, and other immovable property not included within the provisions of Chapter II, and not being one of the tramways or railways mentioned in section 8; such notice shall be in the form in Schedule (E) contained, and shall require such owner, chief agent, manager or occupier to lodge in the office of such Collector within two months a return of the net annual profits of such property, calculated on the average of the annual net profits thereof for the last three years for which accounts have been made up.

Such Collector may in his discretion extend the time allowed for lodging such return.

73. Whenever any property assessable under this chapter lies in two or more districts, the notice to furnish a return under section 72 shall be served on the owner, chief agent, manager or occupier of such property by or through the

Collector of the district in which such owner, chief agent, manager or occupier may reside or have his chief place of business, and one return for the whole of such property shall suffice.

74. Whenever any property assessable under this chapter lies partly within and partly outside the territories administered by the Lieutenant-Governor of Bengal, the return furnished as required by section 72 shall state the total annual net profits calculated as aforesaid accruing from such property, and also the proportion of such profits which may reasonably be calculated to accrue in the territories administered by the Lieutenant-Governor of Bengal.

75. If such return be not furnished within the period of two months from the date on which such notice was served, or, within any extended time allowed by the Collector of the district, or if such Collector shall deem that any return made in pursuance of such notice is untrue or incorrect, such Collector shall proceed to ascertain and determine by such ways or means as to him shall seem expedient the annual net profits of such property calculated as aforesaid.

76. If such Collector be unable to ascertain the annual net profits as aforesaid of any property assessable under this chapter, he may, by such ways or means as to him shall seem expedient, ascertain and determine the value of such property, and shall thereupon determine six per centum on such value to be the annual net profits thereon.

77. The expenses incurred in making any valuation under section 75 or section 76 may be recovered together with all costs of the recovery thereof as provided in section 98 from the person who was bound to make such return or who made the incorrect return.

78. So soon as such Collector shall have ascertained and determined the annual net profits as aforesaid of any such property, he shall cause to be served upon the owner, chief agent, manager or occupier of such property a notice informing him of the amount of the annual net profits so ascertained and determined by him.

79. New valuations under this chapter shall be made by the Collector of the district every year, and such Collector may for that purpose cause such notices to be issued and served, and such returns to be made, and shall have such powers and authorities as are in this part mentioned and conferred;

Provided that whenever any return made under section 72 shall be accepted by the Collector for any year, the owner, chief agent, manager or occupier of such property may, if he see fit, declare in writing at the time of such acceptance that the annual net profits set forth in such return may, for the purposes of this Act, be deemed to be the annual net profits for each of the five years then next ensuing;

And if the Collector of the district shall agree to accept such declaration, no new valuation shall be made of such property until the said five years shall have expired.

80. When the rate of road cess and public works cess to be levied in the district upon property assessable under this chapter shall have been determined for any year as in this Act provided, the Collector of the district shall cause to be served on the owner, chief agent, manager or occupier of every such property a notice showing the amount of road cess and public works cess respectively payable in respect of such property, and specifying the date from which such cesses shall take effect. And such amount shall be payable by such owner, chief agent, manager or occupier to such Collector in two equal instalments—the first on the expiry of six months, the second on the expiry of nine months, after the date fixed as hereinbefore provided for the commencement of the year.

81. In any case in which the occupier of such property is a different person

from the owner, and has paid in excess of half of the sum due as road cess and public works cess on account of any instalment, such occupier shall be entitled to deduct the amount of such excess from the next and subsequent instalments of rent payable in respect of such property; and every owner who has paid in excess of half of such sum due shall be entitled to recover the amount of such excess from the occupier, provided that in no case shall an occupier deduct from his annual rent more than half of the rate of the road cess and public works cess on every rupee thereof.

82. The total of the cesses payable in respect of property assessable under this chapter, owned or occupied by the same person in two or more districts, shall be payable to the Collector of the district where the owner, chief agent, manager or occupier may reside or have his chief place of business, and shall be by him transmitted to the Collectors of other districts in the proportion in which the committees of such district shall be severally entitled thereto, as provided in the section next following.

83. Whenever any property assessable under this chapter lies in two or more districts, the Lieutenant-Governor shall from time to time determine out of the total annual net profits stated in the return, or in the valuation of such profits accruing in the territories subject to him, and ascertained in any manner as aforesaid, the proportions in which such property shall be assessed in each of the said districts respectively, and the proportion of the road cess due thereon which shall be assigned to the committee of each district concerned.

84. Every notice under this chapter may be served—

- (a) by leaving it at the registered office (if any) of such owner, chief agent, manager or occupier aforesaid; or
- (b) by sending it by post in a letter addressed to such owner, chief agent, manager or occupier at his office, or, if he have more offices than one, at his principal office; or
- (c) by giving it to such owner, chief agent, manager or occupier.

CHAPTER VI.—*Special provisions for Orissa and Midnapore.*

85. In any district of the province of Orissa and in the district of Midnapore, the Collector may at any time, with the sanction of the Commissioner, order that any revenue-free estate not exceeding 500 standard bighas in extent, of which the valuation shall have been completed, shall, for the purpose of payment and levy of the cesses due in respect thereof, be annexed to any other estate within the ambit of which it is situate or which it adjoins.

86. Notice of such order shall be given by the Collector to the holder of the estate to which such revenue-free estate is ordered to be so annexed, and to such notice shall be appended a copy of the valuation-roll of the said revenue-free estate, and thereupon such holder shall be liable to pay annually to the Collector on account of such revenue-free estate, road cess and public works cess at one-half of the rate which may be fixed under this Act for the levy of the said cesses respectively in the district generally for each year.

87. Notice of such order shall also be given by the Collector to the holder of the said revenue-free estate, and such notice shall require him to pay annually, and he shall thereupon be bound to pay to the holder of such other estate, road cess and public works cess at the full rates which may be fixed under this Act for the levy of the said cesses respectively in the district generally for each year.

88. Such cesses shall be so payable by the holder of the said revenue-free estate in two equal instalments on such dates as may be fixed by the Lieutenant-

Governor under section 42 for the payment of cess by the holders of revenue-free estates, or in such other instalments and on such other dates as the Lieutenant-Governor may direct, or, if the Lieutenant-Governor shall so order, the whole amount so payable on account of such cesses for each year shall be payable in a single sum on any such date as the Lieutenant-Governor may appoint.

In default of payment as hereby required, the provisions of section 47 shall be applicable.

89. Whenever the service of a notice on the holder of a revenue-free estate is required by the provisions of section 40, the Collector shall cause such notice to be served, notwithstanding that the revenue-free estate may have been annexed to another estate as hereinbefore provided;

and the Collector shall further cause a notice containing the same particulars to be served in respect of such revenue-free estate on the holder of the other estate to which it is under the provisions of section 85 annexed.

90. The Collector may, at any time, with the sanction of the Commissioner, revoke any order passed under section 85, and shall give notice of such revocation both to the holder of the revenue-free estate affected, and to the holder of the other estate to which such revenue-free estate was annexed.

CHAPTER VII.—Miscellaneous.

91. The Collector, with the sanction of the Board of Revenue, may appoint such establishments as may be required for making valuation and re-valuations under this Act, for making collections, recovering arrears, keeping accounts connected therewith, and generally for all purposes connected with such valuations, revaluations, collections, and recoveries, and other purposes of this Act, and may incur such other expenses as are requisite for such purposes;

and the payment of such establishments and other charges on bills signed by the Collector shall be the first charge on the district road fund.

92. For the purpose of making any valuation of lands directed by this part, the Collector shall exercise the powers vested in Collectors by clause of section 23, and clause I of section 24 of Regulation VII of 1822, except so far as the said clauses authorize any enquiry into rights or interests attaching to such lands.

93. Every valuation under this part shall be open to revision by the Commissioner or Board of Revenue, and not otherwise.

94. Any person who is bound to make any return under this part shall be deemed to be legally bound to give notice and to furnish information to a public servant in respect of the same. If the Collector shall see ground for believing that any return made is false, he may prosecute the maker accordingly. And if the person so prosecuted is convicted, the Collector may proceed to make a valuation of the lands mentioned in such return by such ways and means as to him shall seem expedient.

95. Every return filed by or on behalf of any person in pursuance of the provisions of this part, shall bear the signature and address of such person, or his authorized agent, and shall be admissible in evidence against such person, but shall not be admissible in his favour.

96. Every notice under this part required to be served, except as otherwise expressly provided, may be served—

(1) by delivering the same to the person to whom it is directed, or on failure of such service, by posting the same on some conspicuous part of the house in which the said person resides, or by delivering the said notice to any agent authorized to accept generally for the person to whom such notice is directed; or

(2) by sending a registered letter containing such notice directed to the said

person at his usual place of abode or to the place where he may be known to reside; or

(3) by posting a copy of the notice at the māl cutcherry of the estate or tenure to which the notice relates, or if no such māl cutcherry be found, on some conspicuous place on such estate or tenure: and, in the case of estates paying their annual revenue by four instalments, by delivering another copy thereof to the agent who shall have paid an instalment of revenue next after the preparation of such notice. In all cases where two or more persons are holders of an estate or tenure, service of notice under this clause shall be deemed to be good and sufficient service on each and all of such persons.

97. The costs of service of every notice and process by this Act required to be served shall, in the first instance, be defrayed from the district road fund, and, subject to such rules as may be made by the Board of Revenue under section 106, shall be recoverable either from the person to whom such notice or process is addressed, or from the person owing to whose default such notice or process is issued, as the Collector may think fit; and every such amount shall be deemed to be due to the Collector, but when levied by the Collector shall be credited to the district road fund;

Provided that no costs or other expenses whatever shall be recovered from any person in respect of the publication or issue of any proclamation or notice calling for any return, or giving intimation of any amount payable by any person as cess under this Act other than notices of demand to pay any amount of cess which has become due.

98. Every amount due, or which may become due, to any Collector under the provisions of this Act in respect of any arrears of cess, of any expenses incurred, of any fee or costs payable, of any notices served, of any fines imposed, or on any other account, may be realized by such Collector by any process provided by any law for the time being in force for the realization of public demands; and shall be deemed to be a public demand under such law;

Provided that the district road committee shall indemnify the Collector of the district for all expenses incurred, and for all costs and damages for which such Collector may become liable (whether in connection with suits before the civil courts or otherwise) in respect of any proceedings for the recovery of any such dues as aforesaid.

99. Instead of proceeding as provided by the last preceding section for the recovery of any sum due under this Act, or if after so proceeding the Collector shall have failed to find property belonging to the person from whom any such sum is due, by the sale of which such sum may be fully recovered, the Collector may, if he see fit, after recording his opinion to that effect, cause a notification in form in Schedule (F) contained to be issued for the estate or tenure in respect of which any such amount is due. Such notification shall be published by beat of drum in every village containing any land to which such notification relates, and a copy thereof shall be posted in a conspicuous place in every such village and at the māl cutcherry of the estate or tenure to which such notification relates, if such cutcherry be found.

Every payment of rent, save and except to the Collector or some person by him thereunto appointed, made after such publication until further order from the Collector, shall be null and void;

and the Collector may recover by any process of law for the time being in force, by which he might recover rent due to the Government from a tenant in an estate which is managed directly by the Collector, the rent then or thereafter to become due from any occupier, tenure-holder, under-tenant or raiyat on the estate or tenure in respect of which the notification has been issued; until the

amount due to the Collector together with all costs shall be satisfied, whereupon the said notification shall be revoked.

The receipt of the Collector in respect of all sums paid to him as rent or so recovered shall be, to the extent of such sums, a valid discharge in respect of rent due by the occupier, tenure-holder, under-tenant or raiyat to whom such receipt is given.

In case the Collector shall see fit so to proceed, the claim for arrears of road cess and public works cess due from any estate or tenure in respect of which a notification has been issued as above provided, shall have priority over any other demand or claim or lien existing thereupon other than the demand of Government revenue.

100. The Lieutenant-Governor may at any time invest any person with the powers of a Collector under this part to be exercised by such person under the control or supervision of the Collector, or independently of such control and supervision, as the Lieutenant-Governor shall direct.

101. The Collector may, with the sanction of the Commissioner, delegate all or any of his powers and functions under this part to be exercised, under the control and supervision of the Collector, by any Deputy Collector, Assistant Collector, Sub-Deputy Collector, or other officer of like rank;

Provided that every order passed by such Deputy Collector, Assistant Collector, Sub-Deputy Collector or other officer, shall be appealable to the Collector within fifteen days of such order being passed.

102. Every person who shall deem himself to be aggrieved by any valuation made by a Collector under the provisions of section 75 or 76 may, within one month after the issue of the notice mentioned in section 78,

and every person who shall deem himself to be aggrieved by any valuation made by the Collector under the provisions of any other section of this part, may, within one month after the posting up of a copy of the valuation-roll as mentioned in section 35,

prefer his objections to the Collector, and if such objections, or any of them, are disallowed, may, within one month of such disallowance, appeal to the Commissioner against such valuation, and the decision of the Commissioner shall be final.

103. Every order for the levy of a fine or of expenses passed by a Collector under this Act shall be appealable to the Commissioner within one month from the service of the first process for the levy of such fine or expenses. Except as otherwise provided in section 18, pending such appeal, and until the order of the Commissioner which shall be final, all process for such levy shall be discontinued.

104. Every order passed by the Collector under section 19, 20, 26, 50, 51, 53, 85, 98, or 99, shall be appealable to the Commissioner within one month from the date of such order.

105. Notwithstanding anything hereinbefore contained, all proceedings of the Collector or of any officer of a lower grade under this part shall be subject to the general control and supervision of the Commissioner and of the Board of Revenue, and all such proceedings of the Commissioner shall be subject to the general control and supervision of the Board of Revenue.

106. The Board of Revenue may from time to time make, and, when made, from time to time alter, add to, or cancel any rules—

(a) prescribing forms for the notices, returns, and valuation-rolls required by this part to be issued or made;

(b) prescribing the amounts which shall be levied in respect of the issue of each notice and process under this part, and regulating the recovery thereof under section 97.

(c) prescribing the amount of copying*fee to be levied in respect of supplying extracts and copies of returns and valuation-rolls as provided in section 34 ;

(d) apportioning the amount of the cesses for the payment of which the respective holders of the several shares of an estate in respect of which separate accounts are kept shall be primarily liable under section 44 ;

(e) regulating the opening, keeping, and closing of separate accounts in respect of amounts of cess payable by recorded shareholders in revenue-free estates as provided in section 46 ;

(f) regulating the proceedings of Collectors under chapter V ; and otherwise providing for the proper execution of this Act in respect of valuations of the assessments and of the levy of the cesses and other sums due under the same.

107. Nothing in this part contained, and nothing done in accordance with this Act, shall be deemed to affect the rights of any person in respect of any immoveable property or of any interest therein except as otherwise expressly provided in this Act.

PART III.

CONSTITUTION AND ADMINISTRATION OF THE DISTRICT ROAD FUND.

CHAPTER VIII.—*Constitution and application of the district road fund.*

108. The district road fund of every district under this Act shall consist of the amount produced by the road cess,

of all sums levied or recovered as fines, penalties or otherwise in respect of the cesses under this Act, "not being interest levied in respect of public works cess"

of all sums assigned by the Government thereto, whether as a contribution from the proceeds of the public works cess towards the expenses of assessing and collecting such cess jointly with the road cess or otherwise, and

of all sums whatever which may be at the disposal of the district road committee as hereinafter appointed.

109. The district road fund of every district shall be applicable to the following objects and in the following order :—

Firstly.—To the payment of the cost of establishments entertained and expenses incurred by the Collector as mentioned in section 91 ;

to the indemnification of the Collector with the sanction of the Commissioner for any other costs or damages which he may have incurred, or for which he may have become liable in the course of the proceedings for the assessment and collection of the cesses under this Act ;

and to the payment of such sums as may be determined by the Lieutenant-Governor for the purposes mentioned in section 181, subject to the limit imposed in that section :—

Secondly.—To the payment of establishments entertained and expenses incurred by the district road committee for the purposes of this Act, and of any leave allowances, gratuities or pensions which may be payable under this Act :

Thirdly.—To the payment of any sums which the committee may under this Act from time to time have undertaken to pay as interest on capital expended on any works which may directly improve the means of communication within the district or between the district and adjacent districts :

Fourthly.—To the repair and maintenance of roads, bridges, water-channels, and other means and appliances for facilitating communications which have been taken charge of by the committee under this Act, or towards which they may have agreed to contribute :

Fifthly.—To the construction of new roads, bridges, water-channels, and other means of communication ;

to the construction, provision, repair, and maintenance of any means and appliances for facilitating communication within the district or between the district and adjacent districts which the committee may determine to construct or to take charge of, or towards which they may determine to contribute ;

to the planting of trees by the roadside ; and
to the construction and maintenance of any means and appliances for improving the supply of drinking-water, or for providing or improving drainage ; and

Sixthly.—To investment in any local debenture loans issued by the Government of India or the Lieutenant-Governor for the construction of productive works, which may directly improve the means of communication within the district, or between the district and adjacent districts ;

Provided—

(1)—that no sum shall be expended from the district road fund in the construction of any channel for the purposes of irrigation,

or for the purposes of drainage connected with any irrigation works in charge of public officers,

or for the improvement or maintenance of any water-channel on which tolls are levied, when the proceeds of such tolls are not paid into the district road fund ;

(2)—that no part of the district road fund of any district shall be applied to the construction or maintenance of any road within any first or second class municipality under the Bengal Municipal Act, 1876, unless such road shall have been expressly excluded from the operation of the said Act under section 32 thereof ; and

(3)—that no part of the district road fund of any district shall be expended on any work or for any purpose without the limits of such district, unless the special sanction of the Lieutenant-Governor to such expenditure shall have been obtained, as being for the benefit of the district charged.

110. With the sanction of the Lieutenant-Governor, the committee may from time to time undertake to guarantee the annual payment from the district road fund of such sums as they shall think fit, as interest on capital expended on any works which may directly improve the means of communication within the district, or between the district and other districts.

111. Whenever any works to which any portion of the road fund of any district is applicable under the last preceding section extend over more than one district, the Lieutenant-Governor may decide the proportions in which the road fund of each district concerned shall contribute towards the cost or interest upon the cost of such works.

CHAPTER IX.—*The district road committee.*

112. For the administration of the district road fund and for the construction, repair, and maintenance of district roads, bridges, water-channels, and other works as aforesaid under this Act, the Lieutenant-Governor shall from time to time appoint, or cause to be elected, under such rules in regard to qualification, election, and discharge, as may by him be prescribed, any number of the payers of road cess of such district, their managers or agents to be members of a district road committee.

113. Every member of the committee may hold office for five years from the date of his appointment or election, and the Lieutenant-Governor may at any time before the expiration of such term of five years accept the resignation of such member.

114. The Lieutenant-Governor may remove any member appointed or elected under this Act, if such member shall have been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct.

115. Any member who, without having obtained permission from the committee, shall have omitted to attend six consecutive meetings of the committee, and any member who shall have been sentenced to imprisonment, shall cease to be a member of the committee.

116. In addition to the members appointed or elected as aforesaid, the Lieutenant-Governor may appoint any officer of Government to be a member of the committee, and may direct, by a writing signed by him, that all persons holding the offices in such writing specified shall be *ex-officio* members of the committee for any district in which they exercise the said offices, and in which this Act shall have come into force;

Provided that the number of members of the committee holding salaried offices under the Government shall not be more than one-third of the total number of the committee.

117. No act or proceedings of the committee shall be invalidated by reason that at the time of doing such act or taking such proceedings the number of members of the committee as then existing, who were holding salaried offices under the Government, was greater than the proportion mentioned in the last preceding section; and no act or proceedings of any meeting shall be invalidated by reason of the proportion of members holding such salaried offices as aforesaid present at the same being greater than as provided by the said section.

Their mode of transacting business.

118. The Collector of the district shall be the Chairman of the committee, and the Vice-Chairman shall be appointed as provided in section 129.

119. The committee shall have an office within the district in and for which they shall have been appointed, and shall meet for the transaction of business at least once in every quarter of a year.

120. There shall be two kinds of meetings for the transaction of business, namely, special meetings and ordinary meetings.

121. Meetings of the following descriptions shall be special meetings:—

- (1) Any meeting convened by the Chairman under section 123;
- (2) For the election of a Vice-Chairman under section 129;
- (3) For determining the salary of the engineer under section 131;
- (4) For the election of an engineer under section 132;
- (5) For determining the details of establishment, and the salaries to be attached to each office under section 133;
- (6) For making rules for leave of absence under section 134, and for pensions and gratuities under section 138;
- (7) For considering and passing the general statement under section 141 or any revised or supplemental statement under section 143;
- (8) For preparing and framing an estimate of income and expenditure, and for determining the rate of road cess for the coming year under sections 146 and 148;
- (9) For amending any such estimate under section 157;
- (10) For receiving and considering the annual report and accounts under section 179;

All other meetings shall be ordinary meetings.

122. The Chairman, or, in case of his absence at the time appointed for the meeting, the Vice-Chairman shall preside at every meeting of the committee.

In the absence of both the Chairman or Vice-Chairman, the members present may choose one of their number to be president of such meeting.

123. The Chairman, or, in case of his absence, the Vice-Chairman, may, whenever he thinks fit, and shall, upon a requisition made in writing and signed by not less than one-third of the members, convene a meeting.

124. At least ten days' notice shall be given of every meeting. Every notice shall state the business to be transacted at the meeting proposed to be called; and no business other than that so stated shall be transacted at such meeting, except with the permission of the meeting.

125. (1)—No business shall be transacted at any special meeting unless at least one-fourth of the total number of members forming the committee at the time of the meeting are present at the commencement and close of such business; and no business shall be transacted at an ordinary meeting unless at least three members are so present.

(2)—The committee may delegate any of their powers to sub-committees consisting of such member or members of their body as they think fit. Any sub-committee so formed shall, in the exercise of the powers delegated, conform to any regulations that may be imposed on them by the committee.

(3)—The committee may hold meetings and adjourn as they think proper. Questions at any meeting shall be determined by a majority of votes of the members present, and in case of an equal division of votes, the president shall have a second or casting vote.

126. If at the time appointed for a special meeting, or within one hour thereafter, a quorum is not present, the meeting shall stand adjourned till some future day to be appointed by the Chairman or Vice-Chairman of the committee, and ten days' notice of such adjourned meeting shall be given. The members present at such adjourned meeting shall form a quorum, whatever their number may be.

127. The minutes of the proceedings of every meeting shall be recorded in a book to be kept for that purpose in the office of the committee, and any person resident in, or owning or holding land in the district may at all reasonable times inspect and examine such book without payment of any fee, and may obtain a certified copy of any extract therefrom on payment of such fees as the Lieutenant-Governor may direct.

At the request of any member of the committee who is not acquainted with the English language, the Chairman shall cause to be delivered to such member an abstract of the minutes of any meeting in the vernacular of the district.

128. All correspondence between the committee and the Lieutenant-Governor shall pass through the office of the Commissioner, who in all things under this part shall be subject to the control and supervision of the Lieutenant-Governor.

The committee shall furnish the Lieutenant-Governor and the Commissioner respectively with any information for which they may call connected with the duties imposed upon them by this Act.

Their Vice-Chairman, engineer, and establishment.

129. The first meeting of the committee shall be convened by the Chairman at such time as he shall think fit, and shall proceed to nominate one of the members of the committee to be Vice-Chairman of the committee, and shall submit to the Lieutenant-Governor the name of the person so nominated; whereupon the Lieutenant-Governor may, if he think fit, appoint such person to be Vice-Chairman of the committee, or may require the committee to nominate and to submit to him the name of some other person, and whenever the office of Vice-

Chairman shall be vacant, a Vice-Chairman shall be nominated and appointed in the manner above-mentioned ;

Provided that whenever the office of Vice-Chairman shall become vacant, the Chairman may, with the approval of the Commissioner, appoint any member of the committee to be Vice-Chairman thereof *ad interim* until the vacancy shall have been filled up by appointment as above provided.

The Vice-Chairman may hold office for a period not exceeding two years, and at the expiration of that time may be re-nominated by the committee and re-appointed to the office by the Lieutenant-Governor.

130. The Lieutenant-Governor may, if he thinks fit, upon the recommendation of two-thirds of the members voting at any special meeting, remove the Vice-Chairman, and any member entitled to vote may give a proxy in writing to any other member for the above purpose.

Such proxy shall be produced at the time of voting, and shall entitle the member to whom it is given to vote as authorized by the tenor of such proxy.

131. The committee at a special meeting shall determine the salary which they are prepared to give to the district engineer, and shall report the same to the Lieutenant-Governor, who may approve of such salary, or require the committee to increase or to reduce the same. In determining such salary regard shall be had in each district to the character of the works and the nature of the duties required therein. The salary so determined and approved may from time to time be altered by the committee with the approval of the Lieutenant-Governor.

132. (1)—Whenever the office district engineer shall be vacant, the committee shall represent the occurrence of such vacancy to the Lieutenant-Governor who shall thereupon cause a list of qualified officers not being less than three in number to be laid before the committee, and the committee shall proceed to elect a district engineer from the persons named in such list.

(2)—All appointments of district engineers existing at the time of the commencement of this Act shall hold good for a period not exceeding two years from such commencement, and on the expiration of such time every office of district engineer to which the last appointment shall have been made before the commencement of this Act shall be deemed to be vacant, and a district engineer shall be appointed in manner above prescribed.

Provided that if the Lieutenant-Governor and the committee are satisfied that no change is required, any person holding the appointment of district engineer at the time of the commencement of this Act may, with the sanction of the Lieutenant Governor, be re-appointed by the committee to be district engineer.

(3)—The district engineer may be suspended, removed or dismissed from his office by the Lieutenant-Governor.

133 The committee, subject to the limit of cost imposed by section 135, may, with the sanction of the Commissioner, determine, and from time to time alter the details of the establishment of officers (other than the district engineer), clerks, and servants to be employed by them or by any branch committee as hereinafter appointed, and the salary to be paid to each such officer, clerk or servant; provided that no salary exceeding Rs. 200 a month shall be attached to any office without the express sanction of the Lieutenant-Governor.

Appointments to offices on the establishment so determined shall be made as follows :—To every office of which the salary does not exceed Rs. 50 per mensem, by the Chairman of the committee or of the branch committee, as the case may be :

To every office of which the salary exceeds such amount, by the committee or the branch committee, as the case may be, with the approval of the Commissioner.

Any such officer, clerk or servant as aforesaid may be suspended or dismissed by the authority appointing him, subject to an appeal to the Commissioner, whose decision shall be final.

134. The committee shall make such rules as to leave of absence and absentee allowances as they from time to time may think fit for their own officers and servants, as well as for those of any branch committee;

Provided that in the case of district engineers drawing a salary of Rs. 200 or upwards per mensem, leave of absence on medical certificate may be granted by the Lieutenant-Governor in accordance with the rules contained in supplement F of the Civil Leave Code, or any other rules for the time being in force for uncovenanted officers of Government, and that no other leave of absence shall be granted to a district engineer by the committee without the sanction of the Lieutenant-Governor.

135. The aggregate salaries and absentee allowances of the engineers, officers, clerks, and servants aforesaid, entertained by any district road committee and by all branch committees in any district, together with the expenses of the Collector's establishments under section 91, and the amount which such district road committee is required to pay under section 181 shall not for any one year, without the express sanction of the Lieutenant-Governor, exceed one-fourth of the income of the committee for the said year exclusive of the balance of the previous year.

136. The Lieutenant-Governor may, on the application of two-thirds of the committees in any division, appoint a divisional superintendent of works, with the necessary office establishment, for the control and supervision of the executive works establishment in all districts of such division, and may determine the proportion of the cost payable by each district in the division in respect of the same.

137. The Lieutenant-Governor may, on the application of any number of districts, whether forming part of the same division or otherwise, appoint a superintendent of works and establishment as aforesaid for such districts, and determine the proportion of the cost payable by each such district in respect of the same.

138. The committee may, with the approval of the Lieutenant-Governor, make rules for pensions and gratuities to be granted and paid out of the district road fund to their officers and servants, and to those of any branch committee, and to the members of any establishment appointed by the Collector of the district under section 91, and may from time to time, with such approval, repeal, alter or add to such rules;

Provided that no officer shall be entitled to any pension or gratuity under this Act from the road fund of any district in respect of any period during which he was not serving under the committee of such district, or under the Collector of such district on an establishment entertained under section 91 for the purposes of this Act;

Provided also that no officer lent by Government and contributing from his salary to any pension fund shall be entitled to claim any pension from the district road fund.

Their functions.

139. The committee may, through their Chairman or Vice-Chairman, enter into and execute any contract necessary for the purposes of this Act;

Provided that every contract made on behalf of the committee in respect of any sum exceeding five hundred rupees, or which shall involve a value exceeding five hundred rupees, shall be sanctioned by the committee and shall be in writing

and signed by at least two of the members of the committee, one of whom shall be the Chairman or Vice-Chairman;*

Unless so executed, such contract shall not be binding on the committee.

140. No member, officer or servant of the committee shall be in anywise pecuniarily interested in any contract or work made with, or executed for, the committee; and if any such member, officer or servant be so interested, he shall be incapable of afterwards continuing to be a member of the committee or holding or continuing in any office or employment under the committee, and shall be liable on conviction thereof to a fine of five hundred rupees;

Provided that nothing in this section shall apply to any person by reason only of his being a shareholder, in any company incorporated by Act of Parliament or by Royal Charter or otherwise, or registered under any Act for the registration of Joint-Stock Companies, passed by the Parliament of the United Kingdom, or by any Indian Legislature, which may enter into any contract with the committee, or execute any work for the committee, if such person shall, at or before the time of any such contract being made or tendered for, declare to the committee the extent of his interest in such company, and, if he be an officer or servant of the committee, obtain the sanction of the committee to his continuing to be such officer or servant.

141. On the commencement of this Act in any district or part of a district, the Vice-Chairman, within three months after his election, shall cause to be prepared a general statement of the roads, bridges, water-channels and other means of communication to be brought within the operation of this Act within the three years then next ensuing, and the committee shall at some meeting to be held within one month after the submission of such statement or at any adjourned meeting take such statement into consideration, and may pass such statement, or may make such alteration or addition therein as it shall think fit. Such statement shall be prepared with due advertence to the provisions of section 109.

142. The committee shall forward the statement which shall be passed as provided in the last preceding section to the Commissioner for transmission to the Lieutenant-Governor.

143. The Vice-Chairman may, in any subsequent year, cause to be prepared a supplemental statement* of the kind mentioned in section 141 or a revised statement, and every such supplemental or revised statement shall be subject to the provisions of the last two preceding sections with respect to the statement therein mentioned.

144. The Lieutenant-Governor may at any time order that any road, bridge, water-channel or other means of communication as above-mentioned be included in, added to, or excluded from, any statement or supplemental or revised statement prepared as mentioned in section 141 or 143.

Estimates: determination of the rate for the year, and publication thereof.

145. The Collector shall, at such date as the committee shall fix, prepare and deliver to the committee a statement showing under separate heads the estimated proceeds for the year then next ensuing, of the road cess at the maximum rate hereinbefore provided, and also of any sum and of any sources of revenue for the said year which the Lieutenant-Governor shall have assigned to the said district, or which may be otherwise at the disposal of the committee.

146. The committee shall, at some meeting to be held in such month as the Lieutenant-Governor shall determine, prepare an estimate of the income and expenditure of the committee for the year then next ensuing.

147. Notwithstanding that any work has been included in such estimate, the committee shall not begin the execution of any work until detailed specifications and estimates of the same have been passed, or until the execution of the work shall have been otherwise sanctioned by any authority whose sanction to the execution of such work is required under any rules made by the Lieutenant-Governor on that behalf as hereinafter provided.

148. In making the estimate of income as by the last section required, the committee shall take into consideration any sum and the proceeds of any source of revenue which shall have been placed at their disposal by the Lieutenant-Governor, or which may otherwise be available to them, and any unexpended balance of the district road fund of the previous year which is expected to be available for expenditure in the year of estimate; and shall proceed to determine the rate at which it will be necessary to levy the road cess for the last-mentioned year, so as to provide the further amount estimated to be required for expenditure in the said year.

149. The total amount proposed to be expended in any one year in and by any estimate prepared as required by section 146, shall not exceed the proceeds estimated to be at the disposal of the committee for that year from the road cess, if levied within the district at the maximum rate at which such cess is leviable as mentioned in section 6, together with any sum, and the annual proceeds of any source of revenue which shall have been placed by the Lieutenant-Governor at the disposal of the committee, or which may be otherwise at their disposal, and with the estimated unexpended balance of the district road fund of the previous year as above-mentioned.

150. Every such estimate prepared by the committee under section 146 shall be forwarded through the Collector of the district to the Commissioner, and the Commissioner may approve such estimate and the rate determined by the committee.

151. If such estimate shall have been approved by any number, being less than two-thirds of the members of the committee present at the meeting at which such estimate was adopted, the Commissioner may before approving of such estimate make such alterations as he shall think fit in the details or total of such estimate, or may return such estimate to the committee with instructions to make any alterations in such details or total;

Provided that the Commissioner shall not make, and shall not require the committee to make, otherwise than with their own consent, any such alterations as shall have the effect of raising the total of such estimate above the total of the sum estimated to be at the disposal of the committee for expenditure during the year in question, the cess being levied at the rate which may have been determined for such year by the committee under section 148.

On receipt of such instructions the committee shall proceed to make such alterations, and shall re-submit the estimate to the Commissioner, who shall thereupon approve of the estimate and of the rate determined by the committee.

152. (1)—If any estimate prepared under section 146 shall have been approved by any number not being less than two-thirds of the members of the committee present at the meeting at which such estimate was adopted, the Commissioner may before approving of such estimate make a communication to the committee, bringing to their notice any alterations which it appears to him to be desirable to make in the details or total of such estimate;

and on receipt of such communication, the committee shall proceed to reconsider such suggestions, and may either

(a) adopt such suggestions or any of them and revise their estimate accordingly, and, if necessary, the rate determined by them as that at which the cess

shall be leviable during the coming year, and submit such revised estimate and rate for the sanction of the Commissioner; or

(b) may adhere to their original estimate, and re-submit it to the Commissioner with their reasons for adhering to the same.

(2)—On receipt of such estimate so re-submitted, the Commissioner may either sanction the estimate and rate as determined by the committee or may submit such estimate, together with the reasons recorded by the committee for adhering to the same, to the Lieutenant-Governor.

153. Whenever any such estimate shall be so submitted by the Commissioner, the Lieutenant-Governor may approve of such estimate, or pass such orders as he shall think fit, in respect to the alterations of the details or of the total of such estimate;

Provided that the Lieutenant-Governor shall not make any such alterations or require the committee to make any such alterations as shall have the effect of raising the total of such estimate above the total of the sum estimated to be at the disposal of the committee for expenditure during the year in question, the cess being levied at the rate which may have been determined for such year by the committee under section 148, unless such rate shall, in the opinion of the Lieutenant-Governor, be insufficient to provide for the proper maintenance of such works as are contained in the statement prepared under section 141 or 143.

If it shall appear to the Lieutenant-Governor that the proceeds of the cess at the rate so determined will not suffice for such purpose, the Lieutenant-Governor may order that the cess shall be levied for the year in question at such rate as he may deem sufficient for such purpose, subject to the limit in section 6 provided.

154. When the estimate prepared and the rate determined by the committee shall have been approved by the Commissioner under section 150, 151, or 152, the rate so determined and approved shall be reported by the Commissioner to the Lieutenant-Governor, who shall forthwith cause the same to be published in the *Calcutta Gazette*.

155. When the Lieutenant-Governor shall, under section 153, have approved of any estimate submitted to him as provided by section 152 and of the rate determined by the Committee under section 148, or under clause (a) of section 152 in connection with such estimate, or when the Lieutenant-Governor shall under section 153 have ordered that the cess shall be levied at any other rate, the Lieutenant-Governor shall cause such rate as finally fixed by him to be published in the *Calcutta Gazette*.

156. The rate published in the said gazette as provided in either of the last two preceding sections, shall be the rate at which the road cess shall be leviable in the district for the year in respect of which such rate is so published, and the Collector of the district shall cause such rate to be published and proclaimed throughout the district and notice be given thereof as in section 40 is provided.

157. Any estimate prepared under section 146 and approved as hereinbefore provided may be amended or revised at any time with the sanction of the authority who originally approved of such estimate; provided that the total of the estimate of expenditure as amended shall not exceed the total of the sources of income assigned to the committee.

CHAPTER X.—Branch Committees.

158. In any district to which this Act shall have been applied, the Lieutenant-Governor may, in addition to a district road cess committee and any branch committees as he shall think fit for carrying

this Act, and shall appoint a Chairman and Vice-Chairman thereof respectively, and shall define the portion of such district within which any branch committee shall exercise the powers conferred and discharge the duties imposed upon them by this Act;

Provided that whenever the office of Vice-Chairman of any branch committee shall become vacant, the Chairman thereof may, with the approval of the Commissioner, appoint any member of such branch committee to be Vice-Chairman thereof *ad interim* until the vacancy shall have been filled up by the Lieutenant-Governor.

159. The provisions of sections 112 to 117 (both inclusive), 119, 122 to 127 (both inclusive), 139, and 140 respecting district road committees, shall apply, so far as the same are applicable, to such branch committees.

160. The Lieutenant-Governor may remove the Chairman or Vice-Chairman of a branch committee whenever he shall think fit.

161. Every branch committee may from time to time select any member thereof to be an additional member of the district road committee and such member shall thereupon, for the space of one year, become a member of the said committee.

162. Every such branch committee shall be, except as hereinafter provided, subordinate to the district road committee, and shall forward to the committee such statements, suggestions, and estimates as it may think fit, and the committee shall consider and have regard to such statements, suggestions, and estimates in framing the statements and estimates hereinbefore directed.

163. Any such branch committee may require that any such statement, suggestion or estimate shall be submitted to the Commissioner for his consideration and for that of the Lieutenant-Governor.

164. The Lieutenant-Governor may in each year assign to any branch committee so much of the road fund levied for that year in the district, for portion of which such branch committee is appointed, as he may think fit, not exceeding the total estimated proceeds of the road cess leviable within the said portion of the district; and further, may allot to the said branch committee so much of the income of the district road fund from other sources as he shall think fit.

165. The Lieutenant-Governor may in any such case declare that the branch committee shall have the full powers of a district road committee within such portion of the district, and whenever the Lieutenant-Governor shall so have declared, the district road committee shall, within such portion of the district, cease to exercise powers and functions under sections 133, 139, 141, 142, 143, and 146. Such powers shall then vest in the branch committee; and the provisions of sections 120, 121 (with the exception of clauses 2, 3, 4, and 6), 123, 142, 144, and 147, shall apply to the proceedings of such branch committee, provided that all correspondence with the Commissioner shall be submitted through the Collector of the district; in any case in which the Lieutenant-Governor may declare that a branch committee shall have the powers of a district road committee for specified works or specified purposes only, the powers of the district road committee in respect of such works and such purposes only shall cease within the said portion of the district, and such powers shall then vest in the branch committee.

Every branch committee so vested with powers as in the last preceding section, on provided shall prepare an estimate in regard to their annual income desirable to dilute similar to that required by section 146 to be prepared by the and on re-committee.

consider such provisions of sections 150, 151, 152, 153, and 157, shall, as far as (a) adopt suble, apply to such estimate; provided that the aggregate amount ingly, and, if necessary the branch committee in any year should not exceed the aggregate at their disposal for that year.

168. The Lieutenant-Governor may at any time order that any of the functions hereafter mentioned or referred to in chapter XI shall be discharged by any branch committee instead of by the district road committee in respect of any portion of the district for which such branch committee has been appointed.

169. The Lieutenant-Governor may at any time revoke an order forming any branch committee or an order declaring that a branch committee shall exercise the full powers or any special powers of a district road committee.

CHAPTER XI.—Disbursement and accounts of the district road fund.

170. The district road fund shall be lodged with the Collector of the district, who shall keep a separate account thereof, and shall cause to be prepared an annual statement of such account, showing in detail therein all sums paid into and all disbursements made from the treasury on account of the district road fund during the year.

After the appointment of any branch committee in a district, the Collector of the district shall in like manner keep a separate account of the fund placed at the disposal of such branch committee.

171. All payments on account of the district road fund shall be made by the Collector out of the said fund upon cheques signed by the Vice-Chairman for sums not exceeding one hundred rupees. When the Vice-Chairman is absent, or from any cause incapacitated from signing, the Chairman may sign such cheques on behalf of the Vice-Chairman:

Cheques for sums exceeding one hundred rupees shall be signed by the Chairman and the Vice-Chairman. When the Vice-Chairman is absent or from any cause incapacitated from signing, such cheques shall be signed by any *ex-officio* member of the committee other than the Chairman, on behalf of such Vice-Chairman.

The word "Chairman" in this section includes any officer for the time being in charge of the office of Chairman under a written order from the Chairman.

172. The Collector shall forward to the Vice-Chairman of every committee, as soon as possible after the close of each month, an account of his receipts and disbursements on account of the district road fund during such month.

173. Every committee shall keep regular and detailed accounts of the moneys received or applied by them under the provisions of this Act and of their application, and such accounts shall be, at all convenient times, open to the inspection of all members of the committee.

174. Every committee shall appoint a standing sub-committee consisting of the Vice-Chairman and not less than two other members for the audit of their accounts; and the accounts of each month shall be laid before the sub-committee as soon as possible after the close of such month; whereupon the said sub-committee shall proceed to audit the said accounts in such manner as the Lieutenant-Governor may direct, and to pass or to amend and correct the said accounts as may be necessary, and to pass them as so amended and corrected.

175. For the purposes of every audit and examination of accounts under this Act, such sub-committee shall have power to call for all vouchers and papers, which they may require.

176. When such sub-committee shall have audited and passed the sums estimated of any month as above provided, they shall certify the result and the of the accounts as passed by them in such form as the Lieutenant-G direct.

177. The accounts of each month audited, passed and certified, when extended, the preceding section provided, shall be submitted by the committee for the purpose of

the twenty-fifth day of the following month, to such officer as the Lieutenant-Governor may direct.

178. As soon as possible after the close of each year, the Vice-Chairman of every committee shall prepare a detailed account of the receipts and expenditure of the district road fund during such year; and also a report of the work done and in progress during such year, whether under the directions of the district road committee or of any branch committee other than a branch committee which has been vested with the full powers of a district road committee under section 165.

179. The annual accounts so prepared by the Vice-Chairman shall be examined and certified by the sub-committee of audit, and after such examination and certification, shall be laid with the said annual report before a special meeting of the committee to be held within two months of the close of such year; and the committee shall submit a copy of the said account with a similar report to the Commissioner for transmission to the Lieutenant-Governor, who shall cause such accounts with an abstract of such report, together with such remarks as the Commissioner may have made thereon, to be published in the *Calcutta Gazette*.

180. Every district road committee may from time to time make, and when made, alter, add to, or cancel bye-laws not inconsistent with the provisions of this Act, for all or any of the following purposes, that is to say:—

- (1) regulating the traffic and providing for the safety and convenience of passengers on any road, water-channel or other means of communication, under the charge of the committee;
- (2) providing for the preservation of such roads, water-channels, and other means of communication, and of the trees planted by, or under the charge of, the committee.

On conviction before a Magistrate a fine may be imposed for the breach of any such bye-laws, provided that no fine exceeds for any offence the sum of ten rupees, or, in the case of a continuing offence the sum of two rupees for every day during which such offence is continued.

Any bye-law so made, and every alteration of, addition to, and cancellation of, such bye-law shall require the sanction of the Lieutenant-Governor;

and, on such sanction being given, such bye-law shall be published in the *Calcutta Gazette* and in the vernacular of the district, as the Lieutenant-Governor may direct;

and on such publication such bye-law shall have the force of law.

CHAPTER XII.—Miscellaneous.

181. The Lieutenant-Governor may from time to time direct that such establishments shall be entertained, and such expenses incurred, in the offices of the Board of Revenue, of the Commissioners of divisions, and of the Superintending engineers, in any other office of control, in any office of account, and in any treasury, or that such special officers shall be employed and such expenses incurred by them, as may be necessary,

for the exercise of proper control over the proceedings of the Collectors and district road committees and branch committees in the discharge of their duties

under this Act,

and expend the proper examination and checking of estimates furnished and accounts district road committees, this Act, and for the proper audit of such accounts,

187. The performance of the duties connected with the cash transactions they are applied road committees;

to be expended by the Lieutenant-Governor may make rules providing for the recovery of gate of the fund by establishments so entertained, and the officers so employed, and of

the expenses so incurred, from the several district road committees in such proportions as he may think fit; provided that the total amount which any district road committee is required to pay under this section shall not in any year exceed two per centum on the income of such committee for such year.

PART IV.

CHAPTER XIII.—General.

182. The Lieutenant-Governor may from time to time make, and when made, from time to time alter, add to, or cancel any rules not inconsistent with the provisions of this Act,

(a) regulating the performance of the duties of the district road committees and branch committees, and of all persons employed under this Act, and in regard to the qualification, appointment, election, and discharge of such person;

(b) prescribing the authorities by whom the execution of works of different classes respectively may be authorized and sanctioned;

(c) prescribing forms for the estimates, accounts, reports and statements required by this Act, to be kept or made by the district road committee;

(d) prescribing forms of accounts to be kept by the Collector under this Act;

(e) providing for the submission and checking of any estimates or accounts and for the audit of such accounts as aforesaid;

(f) fixing the dates for payment of instalments of cess under sections 4 and 47;

(g) determining the amount of fees to be levied for supplying copies of proceedings of any district road committee or branch committee as provided in section 127;

(h) fixing the month in which the meeting mentioned in section 146 shall be held;

(i) and generally for the purposes of this Act.

Such rules shall be published in the *Calcutta Gazette*, and shall thereupon have the force of law.

SCHEDULE A.

Form of return prescribed by section 14.

Amount of Government revenue or rent payable by the estate or tenure:

Rs. A. P.

apera
ams en

PART I.

District

Name by which the estate or tenure is known, and the number extended, the name on the Collector's general register, or on any other register, form as the purposes of

Details of lands in the actual occupation or cultivation of the person submitting the return :—

1	2	3	4	5
Pergunnah.	Name of village and thana in which the lands are situate	Area of land, if known	Deduct area of land situate within any municipality.	Annual value of remaining land.

NOTE.—“ In the body of this statement should be entered only nijjote lands and such uncultivated lands in the use and occupation of the maker of the return as are capable of assessment on their annual value.” (Act II B. C. of 1881).

PART II.

District

Name and number of estate or tenure as in Part I.

Details of lands held by cultivating raiyats paying direct to the persons submitting the return :—

1	2	3	4	5	6	7
Pergunnah.	Name of village and thana in which the lands are situate.	Name of riyat, name of village, thana, and district in which he resides	Area occupied, if known	Annual rent	Deduct rent of land included in any municipality	Balance of net rent assessable.

PART III.

District

Name and number of estate or tenure as in Part I.

Details of the tenure-holders paying to the person submitting the return :—

1	2	3	4	5	6	7	8
holder and for rent for sect. on the books of estate or and expend district road 167. The they are applica to be expended by gate of the fund	Name of village, thana and district in which such person resides.	Name of village and thana in which tenure is situated.	Name of village and thana in which mal cutcherry is situate.	Area, if known.	Annual rent paid by tenure-holder.	Deduct rent of land included in any municipality.	Balance of net rent assessable.

If for any good reason the holders will be unable to lodge the return within the time allowed they should apply to the Collector for extension of such time.

(Sd.) A. B.,
Collector.

COLLECTOR'S OFFICE,

Dated

N. B.—To this notice shall be annexed forms of Parts I, II, III, and IV of the return which is mentioned in Schedule A.

SCHEDULE B.

FORM NO. II.

Form of notice upon a revenue-free estate or rent-free tenure under section 17.

District of

NOTICE UNDER SECTION 17 OF THE CESS ACT, 1880.

The holder of the revenue-free estate or rent-free tenure (description to be filled in) in the district of and all others interested therein are hereby required to lodge in the office of the Collector of the said district, a return, in the form hereunto annexed, of all lands comprised in such estate or tenure. Such return must be signed by such holder or his authorized agent, and be so lodged within the time mentioned below under a penalty of a daily fine which may amount to fifty rupees on each such holder for every day after the expiry of such time or of any extended time which may be allowed by the Collector on application made to him until such return shall be lodged.

Notice is hereby given that no rents due to the holders of the said estate (or tenure) can be recovered by suit after such time until such return be so lodged.

If the gross annual rental of the estate or tenure to which this notice refers does not exceed Rs. 500, the holders are required to lodge the return within six weeks of the service of this notice.

If the gross rental exceeds Rs. 500, within three months of such service.

If for any good reason the holders will be unable to lodge the return within the time allowed, they should apply to the Collector for extension of such time.

(Sd.) A. B.,
Collector.

COLLECTOR'S OFFICE,

Dated

N. B.—To this notice shall be annexed forms of Parts I, II, III and IV of the return which is mentioned in schedule A.

SCHEDULE C.

Form of notice under section 33.

ing section 167. The
and expenses
district road
167. The
they are applica
to be expended by
gate of the fund

NOTICE UNDER SECTION 33 OF THE CESS ACT, 1880.

chief agent, manager or occupier of (give the name by which the

(*concern or property is known*) situated in the district of _____ is hereby required to lodge in the office of the Collector of _____ of _____ return in the form hereunto annexed, showing the amount of land under cultivation at the date of this return in the said _____. Such return must be signed by him and be lodged within the space of two months from the service of this notice (unless within the said two months such owner, chief agent, manager, or occupier obtain from the Collector an extension of the said space of two months), under penalty of a daily fine of fifty rupees for every day after the expiry of such period or extension thereof until such return shall be presented.

Form of return to be affixed to the notice.

District

Details of lands acquired under any rules for the sale, lease, grant, or clearance of waste lands, or held direct from Government and used for the cultivation of tea, coffee or cinchona, under the control of the persons submitting the return:—

1	2	3	4	5	6	7
Districts	Parganas and thanas	Designation by which the estate, lot or grant is known, and the number it bears on any register kept by the Collector.	Name of owner, agent, manager or occupier.	Entire area of land.	Area or areas of land under cultivation.	Aggregate value at Rs. 10 per acre of land in column 6.
In which the lands lie.						

I, X. Y. Z., do declare that the statements contained in the above return are true to the best of my knowledge, information, and belief.

Signed _____

N. B.—This return must be signed by the owner, chief agent, manager or occupier.

SCHEDULE D.

Form of notice under section 52.

NOTICE TO HOLDERS OF LANDS HELD RENT-FREE UNDER SECTION 52 OF THE CESS ACT, 1880.

Notice is hereby given to all concerned that the lands specified in annexed extracts from valuation-rolls of estates and tenures have been entered in the holders of such estates and tenures in the valuation returns of their _____ and tenures under the Cess Act, 1880, and have been valued as shown in the extracts.

Every owner and holder of any land entered in these extracts may appear before the Collector within one month of the publication of this notice, and may object to the amount at which his land has been valued.

If no such objection is made, the owners and holders of lands will be bound

to pay year by year to the holder of the estate or tenure in which his land has been entered the amount of road cess and public works cess calculated on the annual value of such land as entered in these extracts at the full rate which may be fixed for the year in the district.

If any instalment of the cess due upon any of the lands included in these extracts is not paid to the holder of the estate or tenure on or before the date which the Lieutenant-Governor may fix for the payment of such instalment, the holder of the estate or tenure will be entitled to recover double the amount due with interest and all costs of suit.

SCHEDULE E.

Form of notice under section 72.

District of

NOTICE UNDER SECTION 72 OF THE CESS ACT, 1880.

The owner, chief agent, manager or occupier of the (give the designation of the property) situated in the district of , is required to lodge in the office of the Collector of the district of a return in the form hereunto annexed, showing the net profits of the calculated on the average of the profits of the last three years for which accounts have been made up. Such return must be signed by him or his authorized agent, and be lodged within the space of two months from service of this notice, unless, within the said two months an extension of the time allowed is obtained from the Collector.

COLLECTOR'S OFFICE,

(Sd.) A. B.,

Dated

Collector.

Annexed form of return.

District

Detail of yearly profits of mines, quarries, railways, and tramways, or other valuable property in the possession or under the control of the person submitting the return :—

1	2	3	4
DISTRICTS.	PARGANAHS.	Name of holder or manager.	Annual net profits per annum on the average of the last three years for which accounts have been made up.
in which the property lies.			

I, Y. Z., do declare that the statements contained in the above return are true to the best of my knowledge, information and belief.

Signed _____

N. B.—This return must be signed by the owner, chief agent, manager or occupier.

SCHEDULE F.

Form of notice under section 99.

District of

NOTICE UNDER SECTION 99 OF THE CESS ACT, 1880.

The occupiers, tenure-holders, under-tenants, and raiyats on estate or tenure (*the estate, tenure or lands to be here clearly designated*) are hereby prohibited, until further order of the Collector, from making any payment of rent now or hereafter to become due from them in respect of any land comprised within such estate or tenure except to the Collector of the said district, or to (*name of person*) hereby appointed to receive the same. The Collector will grant receipts for all sums paid, and such receipts will, under the provisions of the above Act, be a valid discharge to the extent of the sums covered by such receipts, for rent due, or hereafter to become due as above stated by the holders of such receipts. All payments, except to the Collector, until further order, will be null and void.

(Sd.) A. B.,

Collector.

PART IX.

LAND REGISTRATION (ACT VII OF 1876 B. C.)

ACT No. VII OF 1876, B. C.

(RECEIVED THE ASSENT OF THE LIEUTENANT-GOVERNOR ON THE 22ND JULY 1876,
AND OF THE GOVERNOR-GENERAL ON THE 9TH AUGUST 1876.)

An Act to provide for the registration of revenue-paying and revenue-free lands, and of the proprietors and managers thereof.

Whereas it is expedient to make better provision for the preparation and maintenance of registers of revenue-paying and revenue-free lands, and of the proprietors and managers thereof, and of certain mortgages of revenue-paying lands: It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called the "Land Registration Act, 1876," and it shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General, which date is hereinafter referred to as the commencement of this Act.

2. From the commencement of this Act, the Regulations mentioned in the schedule hereto annexed, to the extent specified in the third column thereof, shall cease to have effect in the Provinces subject to the Lieutenant-Governor of Bengal.

3. In this Act—unless there be something repugnant in the subject or context—

(1) "Civil court" means any civil court which is competent to hear and determine the matter with respect to which the words are used:

(2) "Estate" includes

(a) any land subject to the payment of land revenue, either immediately or prospectively, for the discharge of which a separate engagement has been entered into with Government:

(b) any land which is entered on the revenue-roll as separately assessed with land revenue (whether the amount of such assessment be payable immediately or prospectively), although no engagement has been entered into with Government for the amount of revenue so separately assessed upon it as a whole:

(c) any land being the property of Government of which the Board shall have directed the separate entry on the general register hereinafter mentioned.

(3) "extent of interest" means the share or interest in an estate or revenue-free property of which the person with respect to whom the words are used is in possession as proprietor or manager.

(4) "Lieutenant-Governor" means the Lieutenant-Governor of Bengal for the time being, or the person acting in that capacity.

(5) "Local division" means a sub-division, parganah, thannah, police division of jurisdiction, or other division according to which the mouzahwar register of the district is arranged.

(6) "Manager" means every person who is appointed by the Collector, the Court of Wards or any civil or criminal court to manage any estate or revenue-free property or any part thereof, and every person who is in charge of an estate or revenue-free property or any part thereof on behalf of a minor, idiot, or lunatic, or on behalf of a religious or charitable foundation.

(7) "Mouzah" includes every village, hamlet, tolah, and other similar sub-division of land commonly in use in any district, by whatever name such sub-division may be known.

(8) "Proprietor" means every person being in possession of an estate or revenue-free property, or of any interest in an estate or revenue-free property, as owner thereof; and includes every farmer and lessee who holds an estate or revenue-free property directly from or under the Collector.

(9) "Recorded proprietor" means any proprietor whose name, and the character and extent of whose interest in an estate or revenue-free property, stand registered in any general register now existing or hereafter to be made, under this Act.

(10) "Revenue-free property" means any land not subject to the payment or land revenue which is included under one entry in any part of the general register of revenue-free lands.

(11) "Section" means a section of this Act.

(12) "The Board" means the Board of Revenue of the provinces for the time being subject to the Lieutenant-Governor of Bengal.

(13) "The Collector" means the Collector of the district to which a register relates.

(14) "The district" means the district to which a register relates.

PART II.

OF THE REGISTERS TO BE KEPT UP BY THE COLLECTOR.

4. The Collector of every district shall prepare and keep up the following registers:—

A.—A general register of revenue-paying lands.

B.—A general register of revenue free lands.

C.—A mouzahwar register of all lands revenue-paying and revenue-free.

D.—An intermediate register of changes affecting entries in the general and mouzahwar registers.

5. The register shall be written in such forms, language, and character, and shall be arranged in such manner not being inconsistent with the provisions of this Act, as the Board from time to time may direct for each district.

The entries in each part of the general registers shall be numbered in one consecutive series for the whole district, and shall follow one alphabetical arrangement, running from the beginning to the end of the part.

6. The general register of revenue-paying lands shall consist of two Parts:—

Part I.—Book of estates borne on the revenue-roll of the district.

Part II.—Book of lands situated in the district appertaining to estates borne on the revenue-rolls of other districts.

7. In Part I of the general register of revenue-paying lands shall be entered the name of every estate which is borne on the revenue-roll of the district, and the following particulars relating to every such estate:—

(a) name of the estate;

(b) number of the estate on the revenue-roll of the district, and the annual amount of revenue for which it is liable;

(c) names and addresses of the proprietors, managers, and mortgagees of the estate, with the character and extent of the interest of each proprietor, manager, and mortgagee;

(d) name of every local division in which any lands of the estate are situated, whether in the district, or in any other district, with specification under each local division of

- (i) the number of mouzahs containing such lands,
- (ii) the name of each mouzah,
- (iii) the number which each mouzah bears under the local division in the mouzahwar register, and
- (iv) the area of land appertaining to the estate which each mouzah contains, if ascertained by survey or other authentic measurement,
- (e) reference to entries made in the intermediate register after the preparation of the general register.

8. In Part II of the general register of revenue-paying lands shall be entered the name of every estate which comprises lands situated in the district, but which is borne on the revenue-roll of some other district, and the following particulars relating to every such estate :—

- (a) name of the estate ;
- (b) name of the district on the revenue-roll of which the estate is borne, with the number which the estate bears on that roll, the annual amount of revenue for which it is liable, and the number which the estate bears in Part I of the general register of revenue-paying lands for its own district ;
- (c) names and addresses of the proprietors, managers, or mortgagees of the estate, with the character and extent of the interest of each proprietor, manager, and mortgagee ;
- (d) name of every local division of the district to which the register relates, in which any lands of the estate are situated, with a specification under each local division of
 - (i) the number of mouzahs containing such lands.
 - (ii) the name of each mouzah,
 - (iii) the number which each mouzah bears under the local division in the mouzahwar register of the district, and
 - (iv) the area of land appertaining to the estate which each mouzah contains, if ascertained by survey or other authentic measurement ;
- (e) reference to entries made in the intermediate register after the preparation of the general register.

9. The general register of revenue-free lands shall consist of three Parts—

Part I.—Book of lands held exempt from revenue in perpetuity.

Part II.—Book of lands occupied for public purposes without payment of revenue.

Part III.—Book of unassessed waste lands and other lands not included in Part I or Part II of the general register of revenue-free lands.

10. In Part I of the general register of revenue-free lands shall be entered all lands held under *badshahi*, *hukami*, and other *lakhiraj* grants which have been declared to be valid by competent authority,

all lands in which the Government has conferred a proprietary title free in perpetuity from any demand on account of land revenue, in consideration of the payment of a capitalized sum, or for any other reason, and any lands of which the Board, on a full report of the circumstances of the case, shall have sanctioned the entry in this part of such register.

Part I of such register shall, as far as possible, contain the following particulars in respect of each entry :—

- (a) name of the revenue-free property with the character of the tenure—whether *jaghir*, *altumgah*, *devatter*, *bishanpiri*, purchased revenue-free, redeemed, or otherwise ;

- (b) date of the grant or title being conferred ;
- (c) nominal area granted ;
- (d) names of the grantor and original grantee ;
- (e) reference to any decree or other order of competent authority declaring or recognizing the grant to be valid ;
- (f) names and addresses of the proprietors and managers of the revenue-free property, with the character and extent of the interest of each proprietor and manager ;
- (g) name of every local division in which any land appertaining to the property is situated, whether in the district or in any other district, with specification under each local division of
 - (i) the number of mouzahs containing such land,
 - (ii) the name of each mouzah,
 - (iii) the number which each mouzah bears under the local division in the mouzahwar register, and
- (iv) the area of land appertaining to the revenue-free property which the mouzah contains, if ascertained by survey or other authentic measurement, with specification of the number of each field according to the papers of such measurement ;
- (h) reference to the entries in earlier registers relating to the property or any part thereof ;
- (i) reference to entries made in any intermediate register after the preparation of the general register.

11. In Part II of the general register of revenue-free lands shall be entered all lands which are occupied by the Government, or by any public body, for public purposes, and on account of which no land revenue is demanded.

It shall contain the following particulars :—

- (a) area of the land comprised in each entry ;
- (b) names of the local divisions and mouzahs in which the lands are situated, with area in each mouzah, and a reference to the number under which each mouzah is entered in the mouzahwar register of the local division ;
- (c) name of the department of Government or of the public body by which the land is occupied ;
- (d) the purpose for which it is occupied ;
- (e) the date and particulars of the appropriation of the land to such purpose ;
- (f) reference to entries in the intermediate register made after the preparation of the general register.

12. In Part III of the general register of revenue-free lands shall be entered all waste and other lands (not being included in any other part of the general register) which are not assessed to land revenue. It shall contain the following particulars :—

- (a) name and number of the lot, or other particulars identifying the property ;
- (b) area comprised in each entry ;
- (c) name of every local division and mouzah in which lands of the property are situated, with area in each mouzah, and a reference to the local division and number under which each mouzah is entered under the local division on the mouzahwar register ;
- (d) reference to entries in the intermediate register made after the preparation of the general register.

13. If it shall appear to the Board that the circumstances of any district

are such that it is not desirable or practicable to prepare the register of revenue-free lands in the manner described in the three last preceding sections, the Board may direct that the said sections shall not apply to such district, and may lay down rules, not being inconsistent with the provisions of this Act, in respect of the registration of revenue-free lands and of the proprietors and managers thereof, provided that such rules shall require the registration of the name of one or more persons as liable for the discharge of the duties and obligations referred to in section sixty-eight, in respect of all lands which under such rules may be registered as separate revenue-free properties.

Such rules, when they shall have been sanctioned by the Lieutenant-Governor and published in the *Calcutta Gazette*, and otherwise locally as the Lieutenant-Governor may order, shall, from such date as the Lieutenant-Governor may direct, have the same force as if they were included in this Act.

14. The mouzahwar register shall be kept up for the purpose of showing, in a connected form, the mouzahs situated in each local division, and the lands, whether revenue-paying or revenue-free, of which each mouzah consists.

15. The mouzahwar register shall be arranged and divided according to sub-divisions, pergunnahs, thannahs, police jurisdictions, or such other local divisions of the district as the Board may from time to time direct for each district; the entries of mouzahs shall have a separate series of consecutive numbers, and a separate alphabetical arrangement for each local division.

The mouzahwar register shall contain the following particulars :—

- (a) name of the mouzah;
- (b) total area of mouzah if ascertained by survey or other authentic measurement, with a reference to the authority for the entry;
- (c) name of every estate or revenue-free property to which any of the lands of the mouzah appertain, with a reference to the entry of each on the general register, and a specification of the area of land in the mouzah which appertains to each, if ascertained by survey or other authentic measurement, with a reference to the authority for such entry;
- (d) gross rental of the area of land in the mouzah which appertains to each estate or property, if such rental has been ascertained, during management of the lands, by the Collector or by other authentic means, with a reference to the authority for the entry;
- (e) reference to entries made in intermediate registers after the preparation of the mouzahwar register.

16. Intermediate registers shall be kept up for the purpose of recording therein from time to time changes affecting the entries which stand in the general and mouzahwar registers, so that by a reference to them, in connection with those registers, correct information up to date on the points recorded may be obtained at any time; also for the purpose of keeping together, as far as possible, in a convenient form, the information which will eventually be required for re-writing the general and mouzahwar registers.

17. The intermediate register shall consist of two Parts, as follows :—

Part I.—Book of changes affecting entries relating to revenue-paying lands.

Part II.—Book of changes affecting entries relating to revenue-free lands.

18. In part I. of the intermediate register shall be recorded in a convenient form all changes in the names of proprietors, managers, and (so far as this Act requires) mortgagees, and in the character or extent of the interest of each such proprietor, manager, and mortgagee, and such other changes affecting any entry standing in the general register of revenue-paying lands, or any entry in the mouzahwar register relating to revenue-paying lands as cannot conveniently be

entered against such entry in the general or the mouzahwar register. It shall contain the following particulars :—

- (a) name of the estate affected with references to the number it bears on the general register of revenue-paying lands, the number it bears on the revenue-roll, and the amount of revenue for which it is liable;
- (b) references to previous entries in the intermediate register relating to the estate;
- (c) particulars of the change, with a reference to the authority under which it is made;
- (d) the numbers borne by the entries in each part of the general register of revenue-paying lands, and under each local division in the mouzahwar register, which are affected by the change here recorded.

19. In Part II of the Intermediate Register shall be recorded all changes in the names of proprietors and managers of revenue-free properties and in the character and extent of interest of each such proprietor and manager, and such other changes affecting any entry standing in the general register of revenue-free lands, or any entry relating to revenue-free lands in the mouzahwar register as cannot conveniently be entered against such entry in the general or the mouzahwar register. It shall contain the following particulars :—

- (a) Name and character of the revenue-free property to which the lands appertain, and number which it bears in any part of the register of revenue-free lands.
- (b) Reference to previous entries in the intermediate register relating to the property.
- (c) Particulars of the change, with a reference to the authority under which it is made.
- (d) The numbers borne by the entries in the general register and under each local division in the mouzahwar register which are affected by the change here recorded.

PART III.

OF THE PREPARATION AND MAINTENANCE OF THE REGISTERS.

20. Until the registers by this Act directed to be prepared are so prepared, the existing registers now kept up in the office of every Collector shall be deemed to be the registers kept up under this Act, that is to say—

The existing general register of revenue-paying estates shall be deemed to be the general register of revenue-paying lands.

The existing pergunnah register (Part II) of revenue-free lands shall be deemed to be the general register of revenue-free lands, and the mouzahwar register in respect of revenue-free lands.

The existing pergunnah register (Part I) of revenue-paying lands shall be deemed to be the mouzahwar register in respect of revenue-paying lands.

The existing register of intermediate mutations shall be deemed to be the intermediate register of changes affecting entries in the general and mouzahwar registers.

And all the provisions of this Act shall, as far as possible, be deemed to be applicable to such registers and to the registration therein of the names and interests of proprietors, managers, and mortgagees.

21. The first general register and the first mouzahwar register under this Act shall be prepared for each district at such time as the Board may direct from the entries in the existing registers mentioned in the last preceding section, and from any other authentic information available to the Collector.

22. The Board may order new registers to be prepared whenever it may think fit, and such registers shall be prepared from the registers existing at the time of such order, and from the entries of subsequent changes in the intermediate registers, and from any other authentic information available to the Collector; and such additions to, omissions from, and alterations in, the entries as they appeared in the previous registers, shall be made as subsequent changes have rendered necessary, and the authority for every change shall be expressly referred to.

23. Whenever, after the preparation of the general registers, it may be necessary to bring any estate or revenue-free property on to any part of such registers on which such estate or property is not already borne, such estate or property shall be at once brought on to such part under a new number, in continuation of the last number already borne on such part; and a note referring to such entry shall be made in the place in the general register in which such estate or property would have appeared according to the alphabetical arrangement mentioned in section 5.

24. Whenever, after the preparation of the mouzahwar register, it shall be necessary to enter any mouzah under any local division of such register under which it is not already borne, such mouzah shall be at once brought under the proper local division with a new number, in continuation of the number borne by the last entry under such local division; and a note referring to such entry shall be made in the place in the mouzahwar register in which such estate or property would have appeared according to the alphabetical arrangement mentioned in section 15.

25. All new entries made in the general and mouzahwar registers after their preparation, as prescribed in the two last preceding sections, shall be made in chronological order.

26. After the general register of revenue-paying lands shall have been prepared, a note shall from time to time be made on such register against the estate affected

of every alteration which may be ordered by competent authority in the amount of revenue assessed on any estate;

of every partition of an estate into two or more estates;

of every change involving the removal of an estate from the part of the register on which it is borne;

of the redemption of every mortgage in respect of which the name of the mortgagee shall have been entered on the register;

and in every such note reference shall be made to the authority under which the change was made.

In preparing the register space shall be left for the future entry of such notes against each estate.

Any other changes affecting the entries as they stand in the register may be recorded in Part I of the intermediate register, as provided in section 18, and a reference shall be made in the general register against the estate affected to every entry which may be made in the intermediate register recording any such change.

27. After the general register of revenue-free lands shall have been prepared, a note shall from time to time be made on such register against the property affected

of every case in which lands entered as revenue-free may be declared liable to assessment, and assessed by competent authority;

of every partition of a revenue-free property into two or more properties;

of every change involving the removal of a revenue-free property from the part of the register on which it is borne;

and in every such note reference shall be made to the authority under which the change was made.

In preparing the register space shall be left for the future entry of such notes against each estate.

Any other changes affecting the entries as they stand on the register may be recorded in Part II of the intermediate register as provided in section 19.

28. Whenever it shall come to the notice of the Collector that any change has occurred which affects any entry in his registers, and renders necessary any alteration therein, the Collector, after making such inquiry as may be necessary, shall make such alteration :

Provided that notice shall be given to the recorded proprietors and managers of any estate or revenue-free property before any change is made in any way affecting such estate or property, and to every person whose name the Collector is about to register as proprietor or manager of any estate or revenue-free property, before such registration is effected; and any objections which may be made to the proposed change or registration shall be duly considered by the Collector before he orders such change or registration to be made.

29. Whenever it shall appear to the Collector, in the course of an inquiry made in respect of an application under section 38 or section 42, or otherwise, that any person whose name is recorded in the general register as proprietor or manager, or joint proprietor or joint manager of an estate or revenue-free property, is no longer in possession of any interest in such estate or property as proprietor or manager, and that the names of other persons have been recorded as proprietors or managers of every portion of the interest in respect of which such proprietor's or manager's name was borne on the register, the Collector may order the name of such person to be struck out from among the recorded proprietors or managers of such estate or property, and, if required, may grant him a certificate to that effect.

30. To enable the Collector more effectually to maintain his registers,

(a) Whenever any competent authority may direct that any estate be transferred from the revenue-roll of one district to that of another, the Collector of the district from the revenue-roll of which the estate is to be transferred shall transmit, to the Collector of the district to the revenue-roll of which the transfer is to be made, a copy of all entries in any of the registers relating to the estate to be so transferred, and entries taken from such copy shall be made in the proper registers of the district to which the transfer is made.

(b) Whenever the Collector of any district shall make an entry, or any alteration of an entry, in his registers, which will affect any entry required to be made under this Act in any register of another district, such Collector shall transmit to the Collector of such other district copy of such entry as made or as altered, and the Collector to whom such copy is transmitted shall cause the necessary entries, or alteration of entries, to be made in the registers of his district.

(c) Every proprietor and manager of an estate or revenue-free property in which any new village may be established, whether under the name of *malah*, *kismat*, or any other designation, shall forthwith give notice to the Collector of the establishment of such new village.

Provided that the Board may exempt any district or part of a district from the operation of this clause.

(d) Every proprietor and manager of an estate or revenue-free property, and any person holding any interest in land, or employed in the management of land, shall be bound, on the requisition of the Collector, to furnish any information required by the Collector for the purpose of preparing, making, or correct-

ing any entry of the particulars specified in section 7, 8, 10, 11, 12, or 15, or to show to the satisfaction of the Collector that it is not in his power to furnish the required information.

Such requisition shall be made by a notice to be served in the manner prescribed by section 50, requiring the production of such information before a date mentioned in such notice.

31. Whoever, being bound by clause (c) of the last preceding section to give notice to the Collector of the establishment of any new village, or under clause (d) of the said section to furnish any information required by the Collector, shall voluntarily or negligently omit to give such notice or furnish such information, or to show to the satisfaction of the Collector that it is not in his power to furnish such information, shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees, for such omission, and the Collector may impose such further daily fine as he may think proper, not exceeding fifty rupees, for each day during which such person shall omit to furnish the information required under clause (d) after a date to be fixed by the Collector in a notice warning the person required to furnish such information that such further daily fine will be imposed.

Such notice shall be served in the manner prescribed by section 50, and the date fixed by such notice shall not be less than fifteen days after service thereof.

The Collector may proceed from time to time to levy any amount which has become due in respect of any fine imposed under this section, notwithstanding that an appeal against the order imposing such fine may be pending.

Provided that whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the Division, and no further levy in respect of such fine shall be made otherwise than by authority of the said Commissioner.

32. Whenever any Civil Court makes a decree confirming any transfer of proprietary possession which has already been made in any estate or revenue-free property, or gives effect to any decree transferring any such possession, such court may order the transfer to be registered in the registers of the Collector, and the Collector shall register such transfer accordingly.

33. All lands which are held without payment of rent, not being a revenue-free property entered in the general register of revenue-free lands as prescribed by sections 10, 11, or 12, and not being a part of any such property, shall, for the purposes of this Act, be deemed to be a part of the estate within the local boundaries of which they are included; and if they are not included within the local boundaries of any one estate, then to be a part of such neighbouring estate as the Collector shall, by an order under his seal and signature, declare.

34. Whenever it shall appear to the Collector that any lands which are not included in any estate as entered in the existing general register should be included in any such estate for the purposes of this Act, the Collector shall cause a notice, addressed to the person who is believed to be in possession of such lands, to be served in the manner prescribed by section 50, and a general notice to be published as prescribed by section 49, to the effect that such lands will be so included if no objection be made within one month of the service of the said notice, or such longer period as the Collector may think fit to allow.

After the expiration of the said month or other period, the Collector shall proceed to inquire into any objections which may have been made, and to pass such order as he may think fit in respect to the inclusion of the said lands in the said estate for the purposes of this Act.

35. Whenever it shall appear to the Collector that any land which is not entered on the general register as a separate revenue-free property should be

entered on the register as such property, he may cause a notice to be served in the manner prescribed by section 50, calling on the person in possession of such land as proprietor or manager to show cause why such land should not be so registered as a revenue-free property; and if after hearing any objections (which may be preferred within a month of the service of the said notice, or such longer period as the Collector may think fit to allow), and after making such further inquiry as may be necessary, the Collector shall be of opinion that the land should be so registered, he shall enter such land on the general register as a revenue-free property, and by a notice served as prescribed in section 50, as well as by a general notice published as prescribed in section 49, shall require every proprietor and manager of such revenue-free property to apply for registration of his name and of the character and extent of his interest as such proprietor or manager, and thereupon every such proprietor and manager shall be deemed, for the purposes of section 68, to be a person who is required by this Act to apply for the registration of his name; and all the provisions of Part IV of this Act, so far as may be practicable, shall apply to every such person.

Provided that no such proprietor or manager shall be liable to any fine under section 65 until after the expiration of three months from the date on which the last mentioned notice shall have been served.

Provided also that no land shall be entered as a revenue-free property in Part I of the general register of revenue-free lands until the circumstances of the case shall have been reported to the Board, and until the Board shall have sanctioned such entry.

36. The Board may decide what revenue-free lands shall be included in each revenue-free property to be registered as such under this Act, and may from time to time direct that lands which are borne on the register as forming one revenue-free property shall be divided and entered on the register as forming two or more such properties; and may similarly direct that revenue-free lands which are borne on the register as forming two or more revenue-free properties, shall be united and entered as forming one revenue-free property.

The Board may also direct that any lands which are improperly borne upon the general register of revenue-free lands shall be removed from such register, or shall be omitted from any new register of such lands which may be prepared.

37. Whenever it shall appear to the Collector that any land which is not included in any revenue-free property entered in the existing general register, should be included in any such property for the purposes of this Act, the Collector may cause a notice to be served on the person believed to be in possession of such lands in the manner prescribed by section 50, and general notice to be published as prescribed by section 42, to the effect that such lands will be so included if no objection be made within one month of the service of the said notice, or such longer period as the Collector may allow.

At the expiration of the said month, or of such period, the Collector shall proceed to inquire into any objections which may have been made, and to pass such order as he may think fit in respect to the inclusion of the said lands in the said property for the purposes of this Act.

PART IV.

OF THE REGISTRATION AND MUTATION OF NAMES.

38. Every proprietor of an estate or revenue-free property or of any interest therein, respectively, being in possession of such estate, property, or interest, at the commencement of this Act, every joint proprietor of an estate or revenue-free property being in charge

of such estate or property, or of any interest therein, respectively on behalf of the other proprietors thereof, at the commencement of this Act,

and every person being manager of an estate or revenue-free property, or of any interest therein, respectively, on behalf of a proprietor thereof, at the commencement of this Act,

shall, if his name and the character and extent of his interest have not already been registered, make application in the manner hereinafter provided for the registration of his name and of the character and extent of his interest as such proprietor or manager, to the Collector of the district on the general register of which such estate or property is borne, or to any other officer who may have been empowered by the Collector to receive such application, within such time as the Lieutenant-Governor may fix as hereinafter provided.

39. The Lieutenant-Governor shall, within six months from the commencement of this Act, fix for each district the date or dates before which such proprietors and managers, being in possession of estates or revenue-free properties, or of any interest therein, respectively, at the commencement of this Act, shall be required to apply for registration of their names, and of the character and extent of their interests, under the last preceding section, and may at any time alter any date so fixed, provided that no date so fixed shall be later than five years after the said commencement.

40. The Lieutenant-Governor may in any district, for the purposes of the last preceding section, fix different dates in respect of estates and revenue-free properties, or in respect of different classes of estates and revenue-free properties, or in respect of different portions of the district:

Provided that no person shall incur any penalty or disability under this Act for failure to apply for registration of his name as such proprietor or manager as aforesaid, until after the lapse of six months from the date on which the notice prescribed by the next succeeding section shall have been published in respect of his estate or property, or in respect of the class of estates or revenue-free properties within which his estate or property falls or in respect of the portion of the district in which his estate or revenue-free property is situated.

41. Every date fixed by the Lieutenant-Governor as provided in the two last preceding sections shall be published by a notice in the *Calcutta Gazette*;

and also by notices to be posted up

at the court or office of the Judge, the Magistrate, and the Collector of the district, in respect of which such date is fixed,

at the court or office of every Moonsif, Sub-divisional Officer, and Sub-Registrar of Assurances in such district;

and at every police-station in such district;

and by proclamation to be made by beat of drum at the head-quarters of such district, and in every place in which a sub-divisional office is situated, and in such other places as the Lieutenant-Governor may direct.

The officer in charge of every court, office, and police-station at which a notice is required to be posted up under this section shall certify to the Collector the date on which the notice was so posted up at his court, office, or police-station, and the latest date so certified shall be deemed to be the date of publication of the notice for the purposes of the two last preceding sections.

42. Every person succeeding, after the commencement of this Act, to any proprietary right in any estate or revenue-free property, whether by purchase, inheritance, gift, or otherwise;

every joint proprietor of an estate or revenue-free property, assuming charge after such commencement of such estate or property, or of any interest therein respectively, on behalf of the other proprietors thereof;

and every person assuming charge after such commencement of any estate or revenue-free property, or of any interest therein respectively as manager,

shall, within six months from the date of such succession or assumption of charge, make application in the manner hereinafter provided to the Collector of the district on the general register of which such estate or property is borne, or to any other officer who may have been empowered by such Collector to receive such applications, for registration of his name and of the character and extent of his interest as such proprietor or manager.

43. Notwithstanding anything contained in section 38 or the last preceding section, the Lieutenant-Governor may in any district exempt proprietors and managers of all or any estates which are liable to pay less than twenty rupees of land revenue annually, and proprietors and managers of all or any revenue-free properties which consist of less than fifty acres of land, from the obligations imposed by this Act in respect of applying for registration of their names, and may at any future time withdraw such exemption and require such proprietors and managers to register their names.

44. Every person who holds a mortgage of any proprietary right in any estate may apply to the Collector for registration of his name as such mortgagee, and of the interest in respect of which he is such mortgagee; and in such application shall specify whether he or the mortgagor is in possession. On receipt of such application the Collector shall proceed, as far as possible, according to the manner hereinafter prescribed in respect of applications for registration as proprietor.

45. Any application for registration under this Act may be presented by the applicant or by some person duly authorized by him in that behalf.

46. If the applicant under section 38 or section 42 is a joint proprietor in charge as aforesaid, or a manager, he shall in his application specify the name of the person or persons on behalf of whom he is in such charge or on behalf of whom he is manager, and the character and extent of the interest of every such person.

47. If the application under section 38, or section 42 be for registration of the name of the applicant as manager appointed by the Collector, the Court of Wards, or by any Civil or Criminal Court, the Collector shall register the name of the applicant, on proof being produced to his satisfaction that the applicant has been so appointed to be such manager.

48. If the application be for registration otherwise than as manager appointed as mentioned in the last preceding section, and if it sets forth circumstances which would justify the Collector in registering the name of the person whose name is required to be registered, or if after further inquiry the Collector considers that such circumstances exist, he shall issue a notice requiring all persons who object to the registration of the name of the person whose name is required to be registered, or who dispute the character or extent of the interest in respect of which it is required to be registered, to give in a written statement of their objections, and to appear on a day to be specified in such notice, not being less than one month from the date of the publication thereof.

49. Such notice shall be published by affixing a copy of the same, on or at all the following places:—

- (a) the zemindari kutchery (if any) of the estate or other place at which the rents are ordinarily received;
- (b) some conspicuous place in at least one village appertaining to the estate to which the application relates, and if the estate comprises lands situated in more than one local division, then in at least one village in each local division containing such lands;

- (c) the office or court of every Collector, Sub-divisional officer, Judge, and Moonsif, within whose jurisdiction, and every police-station within the jurisdiction of which any of the lands to which the application relates are known to be situated

50. If the application alleges that the applicant has acquired possession of the interest in respect of which he applies to be registered by transfer from any living person, a copy of such notice shall be served on the alleged transferor by tendering to the person to whom it may be directed a copy thereof attested by the Collector, or by delivering such copy at the usual place of abode of such person, or to some adult male member of his family; or in case it cannot be so served, by posting such copy upon some conspicuous part of the usual or last known place of abode of such person.

In case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such way as the Collector issuing such notice may direct.

No fees or other costs shall be payable by the applicant in respect of the service or publication of the notice prescribed by this and the last preceding section.

51. No irregularity or omission in the publication or service of notice as required by the three last preceding sections shall affect the validity of any proceedings under this Act, unless it is proved to the satisfaction of the Collector that some material injury was caused by such irregularity or omission.

52. On the day fixed in the notice issued under section 48, or as soon thereafter as possible, the Collector shall consider any objections which may be advanced, and make such further inquiry as appears necessary to ascertain the truth of the alleged possession of, succession to, or transfer of the estate, revenue-free property, or interest therein, in respect of which registration is applied for; and if it appears to the Collector that the possession exists,

or that the succession or transfer has taken place, and that the applicant has acquired possession in accordance with succession or transfer, but not otherwise,

the Collector shall order the name of the applicant to be registered in the proper registers as proprietor or manager of the said estate, revenue-free property, or interest therein.

Provided that any person to whom any proprietary right in an estate has been mortgaged, may be registered as mortgagee, whether he be in actual possession or otherwise.

53. For the purpose of the inquiry mentioned in the last preceding section, and of every inquiry held under this Act, the Collector may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents by the same means, and, as far as possible, in the same manner as is provided in the case of a civil court by the Code of Civil Procedure.

54. All costs of any inquiry or proceeding held before the Collector under this Act shall, except as provided in section 50, be payable by the parties concerned, and the Collector may pass such orders as he shall think fit in respect of the payment of such costs.

55. If the applicant's possession of, succession to, or acquisition by transfer of, the extent of interest in respect of which he has applied to be registered, is disputed by or on behalf of any person making a conflicting claim in respect thereof, and if the possessor of the applicant in accordance with his application is not proved to the satisfaction of the Collector, the Collector shall determine summarily the right to possession in respect of the interest in dispute, and shall deliver possession accordingly, and shall make the necessary entry in the registers;

or if, in the opinion of the Collector, the dispute be one which can more properly be determined by a civil court, the Collector shall refer the matter in dispute to the principal civil court of the district for determination as hereinafter provided.

Provided that if the applicant's possession of any extent of interest in accordance with his application be not disputed; or if such possession be proved to the satisfaction of the Collector, the Collector may register the said applicant's name in respect of such extent of interest, and may at the same time make a reference hereinafter provided to the civil court for determination of any dispute as to any further extent of interest in respect of which the applicant has applied to be registered, but in respect of which the right of the applicant to be registered is disputed, and is not proved to the satisfaction of the Collector.

56. In any case of disputed possession of, succession to, or acquisition by transfer of, the extent of any interest in respect of which application is made under the last preceding section, the Collector may appoint a receiver to collect the rents of the extent of interest in dispute, and from the sums so collected shall be paid the expenses of management and the revenue due to the Government; and the surplus shall be held in deposit in the Collector's treasury, and shall be paid over to the person who shall be registered by the Collector, or under the order of a civil court, in respect of the extent of interest in dispute.

57. Every order of a Collector passed under the first clause of section 55 shall be of the same force and effect as an order passed by the Judge under section 4 of Act XIX of 1841 (*an Act for the protection of moveable and immoveable property against wrongful possession in cases of succession*), determining summarily the right to possession and delivering possession accordingly;

and no proceedings shall be taken by any civil court under the said Act in respect of any claim or dispute which has been determined by an order of the Collector as aforesaid.

58. In making a reference to the civil court under section 55, the Collector shall state for the information of the said court in writing under his hand

- (1) the name of the estate or revenue-free property to which the reference applies, together with the numbers which it bears on the general register and (if an estate) on the revenue-roll of the district;
- (2) the names of all the persons who now stand registered on the general register as proprietors, managers, or mortgagees of such estate or property, with the character and extent of the interest in respect of which each stands registered;
- (3) the name of the applicant for registry;
- (4) the character and extent of the interest in dispute;
- (5) the circumstances of the case as far as they are before the Collector, and the reasons which have led him to make the reference.

59. On receipt of such reference the said principal civil court of the district may either proceed to determine the matter, or may transfer the matter for determination to any other competent civil court in the district. The said principal civil court, or the court to which the matter is transferred, shall cite the parties concerned, and give notice of the time at which the matter will be heard; and after expiration of the time so fixed, shall determine summarily the right to possession in respect of the interest in dispute (subject to regular suit), and shall deliver possession accordingly.

60. If it shall appear to the Judge of the Court by which the matter is heard that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, such Judge may appoint curators

for the care of the property, and may exercise all or any of the powers mentioned in sections 5 to 13 (both inclusive), of Act XIX of 1842.

61. The said Court may make such order as it shall think fit with regard to the payment by the parties of the cost of the inquiry and proceedings.

Provided that, no costs shall be recoverable from the parties on account of the issue of notices citing the parties and fixing a date for the first hearing of the case.

62. The summary decision of the Court under section 59 shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, not subject to any appeal or order for review.

63. The Court shall certify to the Collector its determination as to the rights of possession, and the Collector shall thereupon make the necessary entries in the proper registers.

64. Fees at the following rates shall be levied by the Collector on the registry under this Act of any transfer:—

- (1) In the case of revenue-paying lands, one quarter or four annas per centum on the annual revenue payable to Government from the extent of interest transferred;
- (2) in the case of revenue-free lands, two and a half per centum on the amount of the annual produce of the extent of interest transferred, such annual produce being the amount of the rents received and receivable on account of the year preceding the year in which the transfer may be registered;

provided that no fee for the registry of any one transfer shall exceed one hundred rupees.

Such fees shall be levied from the person in whose favour the transfer is registered.

All fees levied under this section shall be carried to the account of Government.

65. Whoever, being required by this Act to apply for the registration of his name and the extent of his interest in any estate or revenue-free property, voluntarily or negligently omits to make such application within the prescribed time, shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees for such omission, and to such further daily fine as the Collector may think fit to impose, not exceeding fifty rupees, for each day during which such person shall omit to apply for such registration after a date to be fixed by the Collector in a notice requiring such person to apply for registration.

Such notice shall be served in the manner prescribed in section 50, and the date before which such person is required to apply for registration shall not be less than one month after service of such notice.

66. The Collector may proceed from time to time to levy any amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending.

Provided that whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the division, and no further levy in respect of such fine shall be made otherwise than by authority of the said Commissioner.

67. Notwithstanding anything contained in section 65, no fine shall be imposed by the Collector under the said section on any person on the ground that such person has failed to make application for registration of his name within the time fixed by the Lieutenant-Governor under section 39 or 40.

or on the ground that such person has failed to apply for registration of his name within the time prescribed by section 42,

if such person shall, at any time after the expiration of the time fixed or prescribed as aforesaid, of his own motion, and otherwise than after the issue of a requisition by the Collector in that behalf, present such application as is required by this Act for the registration of his name, and of the character and extent of his interest.

68. Save as is provided in section 90 of the Code of Criminal Procedure, all the recorded proprietors and managers of an estate or revenue-free property shall be deemed to be jointly and severally liable for the discharge of any duties and obligations which are by any law for the time being in force imposed upon the proprietors of such estate or property;

and all persons who are required by this Act to apply for registration shall, from the date on which the obligation so to register is imposed on them respectively by this Act, be deemed to be liable for the discharge of any duties and obligations which are by any such law as aforesaid imposed upon the proprietors of the estate or property in respect of which they are required to apply for registration respectively.

PART V.

OF THE OPENING OF SEPARATE ACCOUNTS IN RESPECT OF SHARES.

69. Notwithstanding anything contained in Act XI of 1859 (*an Act to improve the law relating to sales of land, &c.*), from the commencement of this Act no separate account shall be opened under the provisions of section 10 or of section 11 of the said Act in respect of the share of any applicant under the said sections otherwise than for a share corresponding with the character and extent of interest in the estate in respect of which such applicant is recorded as proprietor or manager under this Act.

70. When a proprietor of a joint estate, who is recorded as proprietor of an undivided interest held in common tenancy in any specific portion of the land of the estate, but not extending over the whole estate, desires to pay separately the share of the Government revenue which is due in respect of such interest, he may submit to the Collector a written application to that effect. The application must contain a specification of the land in which he holds such undivided interest, and of the boundaries and extent thereof, together with a statement of the amount of Government revenue heretofore paid on account of such undivided interest. On the receipt of this application the Collector shall cause it to be published in the manner prescribed for publication of notice in section 10 of Act XI of 1859.

In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it.

The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

71. Section 12 of the said Act XI of 1859 shall apply to every application made under the last preceding section; and the effect and consequences of opening a separate account under the last preceding section shall be such and the same as are described in section 13 and in section 14 of Act XI of 1859.

72. Whenever any share in respect of which a separate account has been opened by the Collector under section 10 or section 11 of the said Act XI of

1859, or under section 70, shall no longer correspond with the character and extent of interest held in the estate by any one proprietor or manager, or jointly by two or more proprietors or managers, any proprietor or manager whose name is borne on the general register under this Act as proprietor or manager of any interest in the share in respect of which such separate account is open, may submit to the Collector a written application setting out the circumstances under which such share no longer corresponds with the extent of interest held in the estate by any recorded proprietor or manager, or jointly by two or more recorded proprietors or managers, and specifying the manner in which such share has become broken up and distributed among the proprietors of the estate, and praying that the separate account standing open in respect of such share shall be closed, and, if he so desire, praying that another separate account be opened in respect of any other share or shares which were wholly or partly included in the share in respect of which the previous separate account was open.

Illustration.

In a certain estate separate accounts have been opened under section 10 of Act XI of 1859 for the 4 annas share of A, and also for the 5 annas share of B, the accounts of the remaining 7 annas share being kept jointly in the names of the remaining proprietors C, D, and E.

In course of time X has inherited A's 4 annas share, and also C's interest in the 7 annas share, which amounted to 3 annas; X has also acquired by purchase 2 annas out of B's 5 annas share, so that the interests in the estate are now distributed as follows:—

X	...	...	...	...	9 annas.
B	...	...	...	...	3 "
D & E	...	...	...	...	4 "

X, if a recorded proprietor of the estate, may apply to the Collector to close the separate account which is open in respect of A's 4 annas share, and also the separate account which is open in respect of B's 5 annas share, as neither of these shares corresponds with the extent of interest held by any one proprietor, or held jointly by two or more proprietors in the estate; and in the same application X may apply for the opening of a separate account in respect of the 9 annas share which he now holds.

Any of the other proprietors might also make a similar application.

73. On receipt of such application the Collector shall cause a copy of the same to be published in the manner provided in section 10 of Act XI of 1859; and if within six weeks from the date of such publication no objection is made by any other recorded proprietor of the estate, the collector shall close the separate account which then stands open, and shall open a separate account with the applicant as required by him, under section 10, or section 11 of Act XI of 1859, or under section 70, as the case may be.

74. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the share in respect of which any separate account is open as aforesaid has not been broken up, and does still correspond with the character and extent of interest held by any one proprietor or manager, or jointly by two or more proprietors or managers,

or object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him,

or (when the application is in respect of a specific portion of the land of an estate, or in respect of an undivided interest held in common tenancy in any specific portion of the land of the estate,) object that the amount of Government revenue stated by the applicant to have been heretofore paid on account of such portion of land, or on account of the applicant's undivided interest therein, is not the amount which has been recognized by the other sharers as the Government revenue thereof,

the Collector shall refer the parties to the civil court, and shall suspend proceedings until the question at issue is judicially determined.

PART VI.

MISCELLANEOUS.

75. The Collector shall supply an extract from any register mentioned in this Act to any person who may apply for the same, subject to the payment of such fees for searching and copying as may be prescribed by the Board.

76. If in any district any register prescribed by this Act has not been prepared and kept up in the vernacular language and character of the district, the Collector shall be bound, together with any English extract which may be furnished under the last preceding section, to furnish a translation of the same in the vernacular language and written in the vernacular character of such district to any one who may demand such translation, and no further charge shall be made in respect of the furnishing of such translation than might have been charged in respect of the English extract furnished under the said section.

77. Whenever any change shall be made by order of competent authority in the names of the recorded proprietors or managers of any estate or revenue-free property, or in the character or extent of the interest of any such proprietor or manager as entered in any register mentioned in this Act, so soon as the order under which such change in the entry may have been made shall have been confirmed on appeal, or so soon as the period for presenting an appeal against such order shall have expired without the presentation of an appeal, the Collector shall cause a notice of such change to be posted up at his office, at the office of every sub-divisional officer within whose jurisdiction any lands of the estate or revenue-free property concerned are situated, and at such places as he may think fit on the estate or property; and every such notice shall set out the name of every proprietor and manager of the estate or revenue-free property concerned, and the character and extent of the interest of every such proprietor and manager as it stands recorded on the general register on the date of the issue of the notice.

78. No person shall be bound to pay rent to any person claiming such rent as proprietor, or manager, of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act;

and no person being liable to pay rent to two or more such proprietors, managers, or mortgagees holding in common tenancy, shall be bound to pay to any one such proprietor, manager, or mortgagee more than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor, manager, mortgagee is registered bears to the entire estate or revenue-free property.

79. The receipt of any proprietor, manager, or mortgagee, whose name and the extent of whose interest is registered under this Act, shall afford full indemnity to any person paying rent to such proprietor, manager, or mortgagee.

80. Whenever any sum of money shall be payable by the Collector to the proprietors of any estate or revenue-free property jointly (otherwise than under the Land Acquisition Act, 1870), the Collector may pay to any one or more recorded proprietors or managers thereof respectively such portion of the said sum as may be proportionate to the extent of the interest in respect of which each such proprietor or manager is registered, and the receipt of each such proprietor or manager shall afford full indemnity to the Collector in respect of any sum so paid.

81. Nothing contained in the three last preceding sections shall be held to interfere with the conditions of any written contract, or to prevent any person

deeming himself entitled to any sum of money from recovering such sum by due process of law from any other person who has received the same.

82. Every amount which may become due to the Collector under the provisions of this Act in respect of any expenses incurred, of any fees payable, of any notices served, of any costs payable by any party, or of any fines imposed, shall be deemed to be a demand under section 1 of Bengal Act VII of 1868 (*an Act to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue*), and shall be leviable as such.

83. The Collector may by a notice require the proprietor or manager of any estate or revenue-free property to name such estate or property by a distinctive name, and in case of failure of such proprietor or manager to comply with the requisition within the time fixed by the Collector, may name such estate or property.

84. The Collector may, by a special or a general order, delegate to any Assistant Collector, Deputy Collector, or Sub-Deputy Collector, the performance of any duty, and the exercise of any function, which the Collector is required or empowered to perform or exercise under this Act, except in respect of appeals;

And any Assistant, Deputy, or Sub-Deputy Collector to whom any duty or function is so delegated may exercise all the powers of a Collector under this Act, except in respect of appeals.

85. Every order passed under this Act by any revenue officer below the rank of the Collector of the district (not being an officer specially vested with appellate powers as hereinafter mentioned) shall be appealable to the Collector of the district, or to any officer who may have been specially vested by the Government with special appellate powers in this behalf,

and there shall be no further appeal from any order so passed in appeal confirming the order appealed against,

but an appeal shall lie to the Commissioner of the division against every order so passed in appeal which modifies or reverses the order appealed against.

Every order passed by the Collector of the district, or by any officer specially vested with appellate powers as aforesaid, being passed otherwise than on appeal from the order of another officer, shall be appealable to the Commissioner of the division.

Every appeal to the Collector shall be presented within fifteen days of the date of the order appealed against;

and every appeal to the Commissioner shall be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days of the order appealed against;

and every appeal presented after the lapse of the time fixed by this section may be summarily rejected, unless sufficient cause shall be shown to the satisfaction of the appellate authority for admitting the appeal after the lapse of such time.

Every order passed by any officer subordinate to a Commissioner shall be subject at any time to revision and modification by such Commissioner;

and every order passed by any such officer or by such Commissioner shall be subject at any time to revision and modification by the Board.

86. In computing the period of limitation prescribed for an appeal, the day on which the order complained of was made, and the time requisite for obtaining a copy of the same, shall be excluded.

87. The Lieutenant-Governor may from time to time vest any officer other than the Collector of the district with special appellate powers under this Act, and every officer so vested shall be competent to hear and decide any appeal which the Collector of the district is competent to hear and decide under this Act.

88. Within four months of the date on which this Act comes into force, the Board shall make general rules consistent with this Act to regulate—
the form in which registers under this Act are to be kept ;

the procedure as to the presentation, admission, and verification of applications for registration under Part IV, and as to inquiries under section 52,

and generally for the purposes of this Act.

The Board may from time to time cancel or alter any such rules.

89. Nothing contained in this Act, and nothing done in accordance with this Act, shall be deemed to

- (a) preclude any person from bringing a regular suit for possession of, or for a declaration of right to, any immovable property to which he may deem himself entitled ;
- (b) render the entry of any land in the registers under this Act as revenue-free an admission on the part of Government of the right of the person in whose name such land may be entered, or an admission of the validity of the title under which the said land is held revenue-free ;
- (c) affect the rights of the Government or of any person in respect of any immovable property or of any interest, except as otherwise expressly provided herein.

SCHEDULE OF REGULATIONS REPEALED.

See Section 2.

Number and year.	Subject or abbreviated title.	Extent of repeal.
XIX of 1792 ...	Non-badshahi lakhiraj grants.	Sections 21, 22, 29 to 34 ; sections 36 to 41 ; so much of sections 42 and 43 as have not been repealed ; sections 44 to 46, all inclusive.
XXXVII of 1793 ...	Badshahi lakhiraj grants.	Sections 16 to 18, 24, 26 to 29, 31 to 33, 35, 36, so much of section 37 as has not been repealed, section 38, so much of section 39 as has not been repealed, sections 40 to 41, all inclusive.
XLVIII of 1798 ...	A Regulation for forming a quinquennial register, &c.	So much as has not been repealed.
LVIII of 1795 ...	Granting to the Collectors a commission on the jumma of certain lands.	So much as has not been repealed.
XV of 1797, ...	Levying fees, &c.	The whole.
VIII of 1800 ...	Pergunnah register ...	So much as has not been repealed, except section 19.

PART X.
THE PARTITION ACT.
ACT NO. VIII OF 1876, B. C
N. B.—See Section 195 Cl. (d).

ACT No. VIII of 1876, B. C.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

*(Received the assent of the Lieutenant-Governor on the 26th August 1876, and of the Governor-General on the 18th September 1876.)**An Act to make better provision for the partition of estates.*

Whereas it is expedient to consolidate and amend the law relating to the partition of estates; It is enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called the "Estates' Partition Act, 1876."

It extends to the territories for the time being under the administration of the Lieutenant-Governor of Bengal;

And it shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General, which date is hereinafter referred to as the commencement of this Act.

2. On the commencement of this Act, the Regulations and Acts specified in the schedule hereto annexed, to the extent mentioned in the third column thereof, shall cease to have effect in the territories subject to the Lieutenant-Governor of Bengal, save so far as they repeal or modify any other Regulations or Acts, and save so far as regards the partition of any estate which shall be pending at the time of the said commencement.

The partition of any estate which shall be pending at the time of the commencement of this Act shall (except as provided in the next succeeding section) proceed and be completed in the same manner as if this Act had not been passed.

3. The provisions of this Act, so far as they relate to the continuation of a partition from the point which it has reached, or to the staying of the partition of an estate, or to striking a partition case off the file, may be applied, at the discretion of the Collector, in all cases of partition of estates pending at the time of the commencement of this Act; provided that, before applying such provisions to the continuation of a partition, the Collector give due notice in each case to the parties concerned that such provisions will be applied.

4. In this Act—unless there be something repugnant in the subject or context—

(i) "Amin" means a person who is appointed by the Collector or Deputy Collector to make any measurement, survey, or local inquiry, or to prepare the papers showing the result of any measurement, survey, or local inquiry.

(ii) "Applicant" means any person who has applied to the Collector under the provisions of this Act for the separation from the parent estate of lands representing his interest in such parent estate, and for the assignment to him of such lands as a separate estate liable for a demand of land revenue distinct from that for which the parent estate is liable.

(iii) "Assets of land" include the rental of the land with respect to which the expression is used, and all profits derived by the proprietors out of such land from rights of pasturage, forests-rights, fisheries, and all other legal sources.

(iv) "Assets of an estate" mean the assets of all land included in an estate.

(v) "Board" means the Board of Revenue for the provinces for the time being subject to the Lieutenant-Governor of Bengal.

(vi) "Chapter" means a chapter of this Act.

(vii) "Deputy Collector" includes any Assistant Collector, Deputy Collector, or Sub-Deputy Collector whom the Collector may appoint (as he is hereby empowered to do) to effect a partition and allotment of assessment under this Act, or to conduct any of the proceedings connected with such partition and allotment.

(viii) "Estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land revenue.

(ix) "Joint undivided estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land revenue, and of which two or more persons are proprietors.

(x) "Land" does not include the houses and buildings standing thereon.

(xi) "Lieutenant-Governor" means the Lieutenant-Governor of Bengal for the time being, or the person acting in that capacity.

(xii) "Parent estate" means any estate for the partition of which proceedings may be in progress under this Act, or of which the partition may have been effected under this Act.

(xiii) "Proprietor" includes every person who is in possession of any estate under partition, or of any portion of such estate, or of any interest in such estate, or in any part of such estate as owner thereof, whether such person be or be not a recorded proprietor of the estate.

(xiv) "Recorded proprietor" means a person whose name is registered on the Collector's general register of revenue-paying lands as proprietor of an estate, or of any share or interest therein.

(xv) "Section" means a section of this Act.

(xvi) "Separate estate" means any distinct estate which may be formed by the partition of a parent estate under this Act, or for the formation of which proceedings may be in progress under this Act.

(xvii) "The Collector" means the Collector of the district on the revenue-roll of which the estate under partition, or which it is proposed to bring under partition, is borne, and includes any officer whom the Board may generally vest (as it is hereby empowered to do) with the powers of a Collector under this Act, and to whom the Collector of the district has, with the sanction of the Commissioner, delegated (as he is hereby empowered to do) any of his duties and functions in respect of the partition of any estate; and any officer whom the Board may especially vest (as it is hereby empowered to do) with the powers of a Collector for the purposes of any partition under this Act.

(xviii) "The Commissioner" means the Commissioner of Revenue to whom the Collector engaged in making the partition is subordinate.

5. All partitions of estates which shall be ordered to be made after the commencement of this Act, shall be made under the provisions of this Act, and no such partition made otherwise than under this Act shall relieve any lands from liability to Government for the total demand of land revenue assessed upon the estate of which they form a part.

6. The amount of land revenue assessed on each separate estate shall bear the same proportion to the whole amount of land revenue for which the parent estate was liable, as the assets of such separate estate bear to the whole assets of the parent estate.

7. Except as hereinafter otherwise expressly provided, the average of the amount of rent which was payable for any land by the cultivating raiyats during the three years immediately preceding the year in which proceedings are taken under this Act for the partition of the estate shall, for the purposes of this Act, be deemed to be the rental of such land.

and if any land is not let, but is held and occupied directly by the proprietors, or any of them, the annual rent for which such land might reasonably be expected to let shall be deemed to be the rental of such land.

Exception 1.—If the rent payable by the cultivating raiyats on account of any land shall have been determined by any court of competent jurisdiction, or shall have been altered with the consent of the said raiyats at any time during the said three years, the amount so determined, or the amount to which the rent may have been so altered, may, if the Collector think proper, be deemed to be the rental of the land.

Exception 2.—If any land is held on a permanent tenure which was created by all the proprietors of the estate, and which by any law for the time being in force is protected against the purchaser at a sale for arrears of revenue, the rent payable by the holder of such tenure shall be deemed to be the rental of such land.

Exception 3.—If any land is held on a tenure which, although not protected as aforesaid, is admitted by all the recorded proprietors of the estate to be a permanent tenure created by all the proprietors of the estate, subject only to the payment of an amount of rent fixed in perpetuity, and of such nature that the rent thereof is not liable to be enhanced under any circumstances by the proprietors of the said estate, or any person deriving his title from such proprietors, the rent payable by the holder of such tenure (whether he be known as talukdar, patnidar, mukarraridar, or by any other designation) shall be deemed to be the rental of such land.

Exception 4.—If any land be unoccupied, such amount as the Collector may determine, with reference to all the circumstances of the case, shall be deemed to be the rental of such land.

PART II.

OF THE RIGHT TO CLAIM PARTITION.

8. Except as hereinafter otherwise provided, every recorded proprietor of a joint-undivided estate, who is in actual possession of the interest in respect of which he is so recorded, is entitled to claim a partition of the said estate, and the separation therefrom and assignment to him as a separate estate of lands representing the interest of which he is in such possession; provided that, and as far only as such partition, separation, and assignment can be made in accordance with the provisions of this Act.

Any two or more such recorded proprietors may claim that lands representing the interests of all such claimants may be formed into one separate estate, to be held by them as a joint undivided estate; and every provision of this Act which applies to an applicant for partition shall apply to any two or more persons making such joint claim.

9. (a) If the interest of any recorded proprietor who is entitled to claim partition as aforesaid is an undivided share in an estate held in common tenancy, such person shall be entitled to have assigned to him as his separate estate lands of which the assets shall bear the same proportion to the assets of the parent estate as his undivided share in the parent estate bears to the entire parent estate.

(b) If the interest of such recorded proprietor is the proprietary right of certain specific mouzabs or lands forming part of the parent estate, and held by severalty, he shall be entitled to have assigned to him as his separate estate the said mouzabs or lands.

(c) If the interest of such recorded proprietor consists of an undivided share in common tenancy in certain specific mouzabs or tracts forming part of the

parent estate, but not extending over the whole area of the parent estate, he shall be entitled to have assigned to him as his separate estate lands situated within such specific mouzahs or tracts, of which the assets shall bear the same proportion to the assets of such specific mouzahs or tracts as his undivided share in such specific mouzahs or tracts bears to the entire mouzahs or tracts:

Provided that, if the interest of such recorded proprietor consists of such undivided share in more than one mouzah or tract, he shall not be entitled to have lands assigned to him in every such mouzah or tract, but the Collector may assign to him as his separate estate lands situated in any one or more of the said mouzahs or tracts, provided that the assets of such lands are in proportion to the aggregate of the interests which he holds in all such mouzahs or tracts.

(d) If such recorded proprietor holds in the parent estate more than one of the kinds of interest specified in this section, lands shall be assigned to him as far as possible in accordance with the principles above laid down.

10. Notwithstanding anything hereinbefore contained, no person having a proprietary interest in an estate for the term of his life only shall be deemed to be a person entitled to claim partition under this Act.

I. L. R. 9 Cal. 244; C. L. R. 108.

11. No application for the partition of a permanently-settled estate shall be admitted, and if the application shall have been admitted, no partition shall be carried out in accordance with such application, if the separate estate of any of the proprietors would be liable for an annual amount of land revenue not exceeding one rupee, until the proprietor of such separate estate agrees to redeem the amount of revenue for which his estate would be liable, by payment of such sum as the Lieutenant-Governor may fix with reference to the circumstances of such estate.

12. Whenever a division of the lands of any estate has been made by private arrangement of the proprietors thereof, and in accordance with such arrangement each proprietor is in possession of separate lands held in severalty representing his interest in the estate, no such estate shall be brought under partition, and no partition of such estate shall be made under this Act otherwise than on a joint petition presented under section 101 or section 105 by all the proprietors thereof, unless such partition shall have been ordered to be made by a civil court.

I. L. R. 7 Cal., 153; 2 C. L. R. 134.

13. The Collector may refuse to admit an application for the formation of lands held in severalty into a separate estate; if in consequence of such lands being intermingled with those held by other proprietors, the result of the partition would be to form out of a compact estate one or more estates consisting of scattered parcels of land in such a way as, in the opinion of the Collector, to endanger the safety of the land revenue, and the Collector may at any time refuse to proceed with a partition which would have such a result.

But a partition may be allowed in such a case if the recorded proprietors shall agree to such a distribution of land as shall make the estates formed by the partition reasonably compact.

Nothing in this section shall be understood to prohibit the partition into separate estates of a parent estate which before such partition is not compact and consists only of scattered parcels of land.

14. No proprietor who has alienated any portion of his interest in an estate, or in any specific lands of an estate, by private contract, with the condition that the transferee shall be liable in respect of the interest acquired by him to pay a specified amount or a specified share of the land revenue for which the estate is liable

(such amount or share being other than the proportionate amount or the proportionate share for which such transferred interest if formed into a separate estate would be liable under the provision of section 6);

and no proprietor who has derived his title from any proprietor who has made any alienation as aforesaid,

shall be entitled to claim a separation under this Act of the interest which he continues to hold in the estate;

and no such transferee as aforesaid, and no person deriving his title from such transferee, shall be entitled to claim a separation of the interest which has been so acquired;

Provided that a separation of such interests may be made, if the parties concerned agree to waive the conditions of the contract as regards the proportion of revenue for which the transferor and transferee or their representatives respectively are liable, and to hold the estates which may be allotted to them respectively by the partition, subject to the payment of such amount of land revenue as may be assessed upon them respectively by the revenue authorities under this Act.

15. Notwithstanding that a parent estate may have been declared to be under partition as provided in section 31, any arrears of revenue accruing due on such estate before the date specified in the notice issued under section 123 may be realised by sale of the parent estate as if such estate had not been declared to be under partition; and if such sale takes place, the partition proceedings shall cease from the date thereof.

16. Nothing contained in the last preceding section shall be deemed to affect the provisions of sections 10, 11, 12, 13, or 14 of Act XI of 1859 (*an Act to improve the law relating to sales of lands for arrears of revenue*), or any provisions of any similar law for the time being in force in respect to the opening of separate accounts for different shares in an estate, and the protection afforded to such shares thereby.

Provided that, if any share in any estate is sold for its own arrears of revenue while such estate is under partition in accordance with the provisions of this Act, such share shall be sold subject to the partition proceedings, which shall proceed as if no such sale had taken place; and the purchaser of the share sold may, from the date of such sale, exercise all the rights which the proprietor whose share he has purchased might have exercised, and shall be subject to all the liabilities to which such proprietor would have been subject in respect of the partition proceedings.

PART III.

OF THE APPLICATION FOR THE PARTITION; THE ADMISSION OF AN ESTATE TO PARTITION; AND THE DISCONTINUANCE OF THE PARTITION PROCEEDINGS AFTER SUCH ADMISSION.

17. All applications for partition shall be made to the Collector of the district on the revenue-roll of which the estate is borne, and shall be made in person, or by duly authorised agent, on paper bearing such stamp as may be required by any law for the time being in force.

18. The application shall be signed by the applicant, and shall supply the following information in regard to the parent estate, so far as the particulars are known to the applicant or can be ascertained by him:—

(a) name of the estate;

(b) number under which the estate is borne on the revenue-roll, and the revenue demand for which it is liable;

(c) number under which the estate is borne on the Collector's general register of revenue-paying lands;

(d) name and address of every proprietor, whether recorded or unrecorded;

(e) the character and extent of the interest of which each proprietor is in possession;

(f) a specification of any lands held by all or any of the proprietors of the parent estate in common with all or any of the proprietors of other estates, and of the rights of such proprietors respectively in such lands.

19. Subject to the provisions of section 61, every application shall, if possible, be accompanied by a copy of the rent-roll of the estate, by a statement of the rents collected from such estate on behalf of the applicant during each of the three years immediately preceding such application, and by copies of any measurement papers of the estate which the applicant may have in his possession.

The said rent-roll, statement and measurement papers shall be attested by the patwaris of the villages, if any, and every such application, rent-roll, and statement shall be presented, subscribed, and verified as provided in section 52.

If the applicant is unable to produce a rent-roll or statement as above required, he shall state the reason of such inability, and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll and statement, and the Collector may, if he shall think fit, require such person to produce such rent-roll and statement.

20. If the application does not fulfil the requirements of the three last preceding sections, the Collector may reject such application or may order it to be amended.

21. If in the opinion of the Collector the application fulfils the said requirements, and there appears to be no objection to making the partition, the Collector shall publish a notification of the application in the manner prescribed in section 134, and shall also cause copies thereof to be posted up at the Court of the Judge of the district, at the court of every Munsif and sub-divisional officer within whose jurisdiction, and at every police station within the jurisdiction of which any lands appertaining to the estate are known to be situated, and shall invite any person claiming any proprietary right in the estate, who may object to the partition, to state his objection either in person, or by duly authorised agent, on a day to be specified in the notification, not being less than thirty or more than sixty days from the date of the publication of the notification on the estate.

22. Notice of the application shall also be served in the manner prescribed by section 135 on such of the recorded proprietors of the estate as shall not have joined in the application, and on any other proprietor who may have been named in the application.

23. If any objection be made to the partition by any person claiming a proprietary right as aforesaid on or before the day specified in the notification published under section 21, or at any subsequent time if it shall seem fit to the Collector to admit such objection, and the Collector, on consideration of such objection, shall be of opinion that there is good and sufficient reason for rejecting the application, he may reject the same, and in that case shall record the grounds of such rejection.

24. If the objection raises any question of the extent of interest, or of right or title as between any applicant and any other person claiming to be a proprietor of the parent estate, and if it shall appear to the Collector that such question has not been already determined by a Court of competent jurisdiction, the Collector may hold such inquiry as he may deem necessary into the objection, and, if he be satisfied that the applicant is in possession of the extent of the

interest for the separation of which he has applied, may, instead of rejecting the application as provided in the last preceding section,

(a) direct that the partition proceedings shall proceed for the purpose of forming and assigning to the applicant a separate estate in accordance with the extent of interest claimed by him in the parent estate; or

(b) direct that such proceedings be postponed for four months.

25. At the expiration of the said four months, the Collector shall resume the proceedings, unless the person who has made the objection, or some other person, shall have obtained an order from a civil court directing that such proceedings be stayed, or shall be able to show that a suit has been instituted before such court to try some question, of such nature that the Collector shall think fit to stay the proceedings until the question shall have been finally decided, or until the proceedings in such court in respect thereof shall have terminated.

26. No suit instituted in a civil court by any person, claiming any right or title in the parent estate, after the lapse of four months from the issue of an order of the Collector under clauses (a) and (b) of section 24, or after the lapse of four months from the issue of an order of the Collector under section 31 declaring the estate to be under partition, shall avail to stay or affect the progress of any proceedings which shall have been taken under this Act for the partition of an estate; and all rights which may be conferred on any person by the final decree in such suit shall be subject to such proceedings in the manner hereinafter provided.

3 C. L. R. 453.

27. Every decree passed in such suit after the parent estate shall have been declared to be under partition as provided in section 31, but before the date specified in the notice under section 123, shall be made in recognition of the proceedings then in progress under this Act for the partition of such parent estate, and shall be framed in such manner that the provisions of such decree may be applied to, and may be carried out in reference to, the separate estates which the Collector in his proceeding under section 31 shall have ordered to be formed out of the parent estate;

and if the effect of any such decree be to declare any person or body of persons entitled to any extent of interest in such parent estate in excess of the extent of interest which the Collector in the said proceeding has declared to be held by such person or body of persons, such decree shall specify, separately in respect of every proprietor or body of proprietors of whose interests the Collector has separately specified the extent in the said proceeding, the proportion of such excess which such person or body of persons is entitled to recover from every such proprietor or body of proprietors;

and every person or body of persons so declared entitled to recover any extent of interest from any such proprietor or body of proprietors shall, for the purposes of the partition proceedings, be deemed to have the same rights, and to be subject to the same liabilities, as a person who has acquired such extent of interest from such proprietor or body of proprietors by private purchase after the estate was brought under partition under section 31, and on the date on which the decree was passed;

and such person or body of persons may apply, as in this Act provided, for the separation and assignment to him, or them, of the lands representing the extent of interest so acquired;

and such application shall be dealt with as provided in section 32.

28. Every decree passed after the date specified in the notice under section 123 in a suit which was instituted as mentioned in section 25, shall be

made in recognition of the partition proceedings, and shall be framed in such manner as to give effect to such division of the parent estate into separate estates as shall have been made by the Collector, and not to disturb such division; and if the effect of any such decree shall be to declare any person or body of persons to have been entitled to any extent of interest in the parent estate, in excess of the extent of interest which is represented by the separate estate assigned to such person or body of persons by the Collector in the partition proceedings, such decree shall specify, separately in respect of the proprietor or joint proprietors of every separate estate formed by the partition, the proportion of such excess of interest which such person or body of persons is entitled to recover, from such proprietor or joint proprietors; and every person or body of persons so declared entitled to recover any extent of interest from the proprietor or joint proprietors of a separate estate shall be entitled to recover such extent of interest out of the separate estate which has been assigned to such proprietor or joint proprietors, and out of such separate estate only;

and every such decree as aforesaid shall be executed by placing the person or persons so declared entitled to recover in the position of a recorded joint proprietor or recorded joint proprietors of such separate estate, holding the same as a joint undivided estate in common tenancy with the proprietor or joint proprietors to whom such separate estate was assigned by the Collector in the partition proceedings, the extent of the interest of the joint proprietors respectively in such estate being such as is declared in the aforesaid decree.

29. Subject to the provisions of section 11, a civil court may at any time direct the Collector to assign to any person lands representing a specified interest in any estate, or in any specified village or tract of land in an estate, to be held by such person as a separate estate, or to divide off from any estate any specified villages or lands, and to assign them to any person to be held as a separate estate, provided that an application for such partition and separation shall be presented by such person as required by sections 17, 18, and 19; but no civil court shall in any case specify the amount of revenue for which any separate estate which it may direct to be formed under the provisions of this section shall be liable.

I. L. R. 8 Cal. 649; 20-W. R. 182; 4 C. L. R. 38; 2 C. L. R. 134.

30. The Collector shall assess the land revenue on every such separate estate in accordance with the provisions of this Act, and no civil court shall direct the Collector to carry out a partition otherwise than in accordance with the provisions of this Act.

31. If no objection be made within the time allowed under section 21 to an application for partition, or when all objections have been disposed of, and if the Collector has no reason to believe that any obstacle exists to his making the partition as applied for, he shall direct that the application be admitted, and record a proceeding declaring the estate to be under partition, for the purpose of forming and assigning to the applicant a separate estate.

In such proceeding the Collector shall declare the extent of interest in the parent estate which he finds to be held by the applicant or joint applicants;

and, if more than one separate application for separation shall have been made and admitted, the extent of interest which he finds to be held by every separate applicant or body of joint applicants respectively;

and also the extent of interest which remains to any recorded proprietor to any number of recorded proprietors who are not applicants;

and shall order that lands proportionate to the interest so declared, or held by each applicant, or body of joint applicants respectively, shall be according

into a separate estate, to be assigned to such applicant or body of joint applicants;

and that lands proportionate to the interest so declared to remain to the recorded proprietor, or the number of recorded proprietors who are not applicants, shall be left forming a separate estate.

32. If at any time after the Collector has made an order for partition under the last preceding section, any recorded proprietor in the estate, other than the original applicant, shall apply for the separation of his share, the Collector may either order that the proceedings for effecting such separation shall be carried on simultaneously with those for separating the share of the original applicant, or, if he consider that such a course would entail delay in the completion of the original proceedings, he may order that no action shall be taken on such subsequent application until after the proceedings for the separation of the original applicant's share shall have been completed.

In the latter case all or any of the rent-rolls, measurements, and other papers which were used in the separation of the original applicant's share, may be used, as far as they are applicable, in the partition for which subsequent application has been made.

33. The Collector may refer any application for partition to a Deputy Collector for the purpose of making any enquiries and doing anything required by this Part; provided that every order—

(a) rejecting an application under section 23;

(b) directing, under section 24, that the partition shall proceed, or shall be postponed;

(c) directing, under section 31, that an application for partition be admitted, and declaring an estate to be under partition;

(d) made under the first clause of the last preceding section;

(e) appointing a Deputy Collector under the next succeeding section to carry out the partition;

shall be passed by the Collector and not by any Deputy Collector.

34. As soon as the Collector has declared an estate to be under partition as provided in section 31, he may appoint a Deputy Collector to carry out the partition, and all or any of the proceedings necessary thereto.

35. If at any time after an order shall have been passed for making a partition, all the recorded proprietors of the estate shall present a petition to the effect that they do not wish the partition to proceed, the Collector may, on the report of the Deputy Collector or otherwise, strike the partition case off the file, on payment by the proprietors of all costs and expenses incurred in and about such partition; and any such costs and expenses, which shall not already have been levied as provided in section 39 or section 40, shall be levied in proportion to the shares of the respective proprietors.

36. If at any time after an order shall have been passed for making a partition, it shall appear from information which was not before the Collector at the time the partition was ordered or otherwise, that any sufficient reason exists why the partition should not be proceeded with, the Commissioner may, on the report of the Collector or otherwise, after issuing a notice calling on the persons interested to show cause why the partition should not be struck off the file, and after considering any objections which may be made, order the partition case to be struck off the file; and in such case any costs and expenses of the partition which shall not already have been levied as provided in section 39 or section 40 shall be levied in proportion to the shares of the respective proprietors.

PART IV.

OF ESTABLISHMENTS FOR EFFECTING PARTITIONS AND OF THE COST THEREOF.

37. For the purposes of the Act, this Deputy Collector may, with the approval of the Collector, and subject to any rules made in that behalf by the Board, appoint such establishments as may be required for making the measurement and survey of lands for ascertaining and recording the rates of rent, for making any other local inquiries, for the preparation of the papers, and for other matters in each case; and the Collector may appoint such peshkars or other superior officers as may be required to test the work of the amins, and for the performance of similar duties; provided that the scale of remuneration of such officers, and the time for which they shall be employed, shall be sanctioned by the Commissioner.

38. In any district or division in which partitions may be so numerous or so extensive as to render necessary the appointment of special establishments in the office of the Collector or of the Commissioner, the Collector and the Commissioner may, with the sanction of the Board, appoint such establishments.

39. As soon as possible after an estate has been declared to be under partition as provided in section 31, the cost of making the partition shall be estimated, and the amount shall be levied from the proprietors in such instalments and at such times during the progress of the partition as may be fixed in accordance with any rules which the Board may make in that behalf.

If the amount first estimated is found insufficient, supplementary estimates may be made from time to time, and the required amount may be levied as above provided.

40. The cost shall be apportioned on the proprietors of each share in proportion to their shares; but whenever it shall appear to the Commissioner that the partition proceedings have been unnecessarily delayed, and the cost of the partition enhanced by obstacles vexatiously put in the way of their completion by one or more of the proprietors, or by want of due diligence on the part of one or more of the proprietors in carrying out any requisitions made upon him or them, the Commissioner may direct that such portion of the cost as he may think proper in excess of the amount proportionate to his or their share shall be levied from such proprietor or proprietors.

41. Whenever any local enquiry may be held by the Deputy Collector or any other officer, in consequence of an objection raised by any person to any record of measurements, rent-rolls, or other information which has been laid before the Deputy Collector, the Deputy Collector may declare the cost which has been incurred by such enquiry, and may direct that the entire cost so declared shall be paid by the person making the objection, or by any one of the proprietors, or that such cost shall be paid in such proportions as he shall think fit, by the said person and the proprietors or any of them, or that such cost be deemed a part of the general cost of making a partition as prescribed in section 39.

42. Upon the completion of the partition, the Collector shall make an order declaring the total cost thereof. The account shall then be adjusted, either by returning to the proprietors any sums which they may have paid in excess of the total cost, or by levying from them in the manner provided in section 135, if necessary, any sums remaining due.

43. Whenever it shall appear to the Lieutenant-Governor that any entry in the district work required to be done by Deputy Collectors in connection with partitions under this Act is so great that such work would, if done according

the hands of one or more Deputy Collectors, fully occupy the time of such one or more Deputy Collectors, the Lieutenant-Governor may make an order directing that the salary of such one or more Deputy Collectors, as the case may be, shall be recovered from the proprietors of estates under partition in such district as part of the cost of such partitions, and thereupon such charge as the Collector may think fit to make in respect of such salary shall, in addition to the items mentioned in the last preceding section, be deemed to be a portion of the costs of every partition.

For the purposes of this section the salary of every Deputy Collector shall be deemed to be the amount of salary which is drawn by a Deputy Collector of the lowest grade.

44. For the purposes of sections 39, 40, and 42, the costs of any partition shall be deemed to be—

(a) the cost of any establishments entertained for the partition under section 37, or such amount as the Collector may think proper in respect of the services of any such establishments which are entertained for the purposes of making partitions in the district;

(b) all contingent expenses incurred in and about the partition, and

(c) such portion of the cost of any establishment entertained under section 38 as the Collector may order.

45. Notwithstanding anything contained in the eight last preceding sections, the Lieutenant-Governor may direct that in any district a fund to be called the "Estates' Partition Fund" shall be formed, into which all sums levied from the proprietors of estates in respect of partitions of their estates shall be paid.

Whenever such a fund shall have been established in any district, all expenses of making partitions of estates in such district shall, except as hereinafter otherwise provided, be defrayed from such fund.

46. Whenever the Lieutenant-Governor shall have ordered an "Estates' Partition Fund" to be formed in any district, the charges leviable from the proprietors of any estate under partition may be estimated and levied according to the estimate in each case as provided in sections 39 and 40, subject to final adjustment, as provided in section 42; or they may be levied according to a general scale of fees to be fixed by the Board.

47. Such scale of fees shall be fixed as nearly as may be, so that the receipts and expenditure of the said fund shall balance one another, and shall be revised from time to time by the Board for that purpose.

Such fees shall be levied from the proprietors in such instalments and at such times during the progress of the partition as may be fixed in accordance with any rules which the Board may make in that behalf, and the provisions of section 40 shall be applicable to such fees.

48. An abstract of the Estates' Partition Fund of each district made up to the end of each year shall be published in the *Calcutta Gazette*, and by being posted up at the office of the Collector of the district.

49. For the purposes of sections 45, 46, and 47, the expenses of making partitions in any district shall be deemed to be—

(a) the cost of all establishments entertained in the district under section 37;

(b) all contingent expenses incurred in all partitions in the district;

the cost of any special establishment appointed in the office of the officer appointed under section 38;

and such portion as the Commissioner may direct of the cost of any special establishment appointed in his office under section 38;

(e) the salary of any one or more Deputy Collectors which the Lieutenant-Governor may have ordered under section 43 to be recovered from the proprietors of estates under partition.

50. Whenever any civil court shall make a decree awarding or declaring any proprietary right in an estate, and shall require the Collector to make a partition of the estate, such court may at the same time direct,

that the party or parties who may have withheld the right so decreed shall defray the whole of the expense which may be incurred in and about the partition, or the whole of the fees payable in respect of the partition under section 46,

or that the said expenses or fees shall be defrayed by all or any of the parties to the suit in which the decree was made in such proportions as the court may, from a consideration of the particular circumstances of the case, deem equitable;

Copies of all orders which the court may pass under this section shall be transmitted to the Collector for his guidance, together with the precept which the court may issue to him requiring him to divide the estate; and the Collector shall levy the said expenses and fees from the parties in the proportion ordered by such court in the same manner and by the same means as if the levy of such expenses and fees had been ordered by the Collector.

PART V.

OF THE PARTITION PROCEEDINGS UP TO THE ADOPTION OF A RENT-ROLL AND MEASUREMENT PAPERS.

51. As soon as the Collector shall have made an order under section 31 declaring an estate to be under partition, the Deputy Collector shall cause a notification to be published in the manner prescribed by section 134, and shall also cause copies thereof to be posted up at the court of the Judge of the district in which any lands appertaining to the parent estate are known to be situated, and at the court of every Munsif and of every sub-divisional officer within the jurisdiction of whom, and at every police-station within the jurisdiction of which, any such lands are known to be situated, intimating his intention to proceed with the partition, and requiring all the proprietors of the estate to produce before a certain date, being not less than forty days from the date of such notification, either jointly or separately, copies of their rent-rolls and statements of the rents collected during each of the three years next preceding, and also copies of any measurement papers of the estate which may be in their possession.

A notice to the same effect shall also be served as provided in section 135 on each proprietor of the parent estate.

The Deputy Collector may, on sufficient grounds for so doing being shown to his satisfaction, from time to time extend the period for producing any such return.

52. Every rent-roll, statement of rents collected, and measurement paper furnished to the Collector under this Act shall be presented by the person who is required to produce the same or by a duly authorized agent of such person who has a personal knowledge of the facts stated therein, and shall be subscribed and verified at the foot by such person or such agent in the manner following, or to the like effect:—

"I, A. B. do declare that this rent-roll (*statement, or measurement paper*) is correct to the best of my knowledge and belief."

If the rent-roll, statement, or measurement paper shall contain any entry which the person making the verification shall know or believe to be false, or shall not believe to be true, such person shall be subject to punishment according

to the law for the time being in force for the punishment of giving or fabricating false evidence.

53. If any proprietor who is required to produce any rent-roll or statement by notice as aforesaid is unable to produce such rent-roll or statement, he shall state to the Deputy Collector the cause thereof and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll and statement, and the Deputy Collector may, if he shall think fit, require such person to produce such rent-roll and statement.

54. The Deputy Collector may, if necessary, make, or may cause to be made, a measurement of all or any of the lands comprised in the estate, and may prepare or cause to be prepared a rent-roll, and may test or cause to be tested on the spot any rent-roll which has been produced as aforesaid, and may make or cause to be made any local enquiry which he may consider necessary.

55. Before proceeding or deputing the amin to the spot, the Deputy Collector shall publish a notification in the manner prescribed by section 134, requiring the several proprietors of the estate, their managers, and any other persons employed in the management of the land, or otherwise interested therein, to attend in person or by agent upon him, or upon the amin who is deputed to make the measurement or enquiry, for the purpose of pointing out boundaries and of affording such assistance and information as may be required for the purposes of this Act.

56. The Deputy Collector, and any amin or other person who is specially authorized in that behalf by the Collector, may, by a notice served as provided in section 135, require any proprietor or other person whose attendance may be required to attend before the Deputy Collector or amin who is making such measurement or enquiry within a specified time at any place for any of the purposes aforesaid.

57. If any objection be made to a measurement, map, or rent-roll prepared by the amin, or if for any other reason it seems desirable, the Deputy Collector shall, as soon as possible after completion of the amin's work, himself test, or shall cause to be tested on the spot, such measurement, map, and rent-roll, and may accept, amend, or reject the same, or any of them. If the Deputy Collector shall deem it necessary, he may cause the work or any portion thereof to be done again.

58. The Deputy Collector may examine any person on solemn affirmation in regard to the papers produced before him, whether by the proprietors, by the amin, or otherwise, and shall allow the parties concerned to put any necessary questions to such person.

The Deputy Collector shall also allow any proprietor or other person interested to examine the papers so produced, and to take a copy of the same, and after such examination shall hear any objections which any of the persons interested may make in respect of such papers, and shall decide whether any, and (if any) which, of the papers as they stand, or with such modifications as he may think necessary, shall be accepted as correct for the purposes of the partition.

59. If any proprietor who has been required to produce a rent-roll or statement under section 51, fails to produce the same after the imposition on him of a fine under section 137 for thirty days, or fails to state to the Deputy Collector the name and address of any person under section 53, the Deputy Collector may declare that the said proprietor shall, for the purposes of the partition, be bound by such rent-roll as the Deputy Collector may adopt as the basis of the partition as hereinafter provided, and after such declaration any officer exercising authority under this Act may refuse to entertain any objection which such proprietor may make to such rent-roll.

60. If any person who has been required to produce a rent-roll or statement under section 53, shall fail to produce the same after the imposition on him of a fine under section 137 for thirty days, the Deputy Collector may declare that the proprietor who may have stated the name of such person under section 53 shall, for the purposes of the partition, be bound by the rent-roll which the Deputy Collector may adopt for the basis of the partition as hereinafter provided, and after such declaration any officer exercising authority under this Act may refuse to entertain any objection which such proprietor may make to such rent-roll.

61. Notwithstanding anything contained in this Act, if it shall appear to the Deputy Collector that any measurements, maps, rent-rolls, or other papers relating to the estate which have been prepared otherwise than for the purposes of the partition, or otherwise than for the purposes of this Act, afford information sufficiently trustworthy to enable him to effect the partition, the Deputy Collector may adopt such information and such papers either wholly or in part for the purposes of the partition, and may dispense with any rent-rolls, maps, or other papers for which he is authorised to call, or which an applicant is required to produce under this Act.

62. No proprietor or other person, who shall have failed to attend in person or by agent during the measurement as required by the notification published under section 55, shall be entitled at any subsequent time to make any objection to such measurement; but the Collector may admit any objection made by such proprietor or person if he think fit, provided that any expense entailed by a local inquiry made in consequence of such subsequent objection shall be paid entirely by such proprietor or person.

63. When the Deputy Collector is finally satisfied that the papers before him, whether rent-rolls, measurement papers, maps, or other papers, are sufficient and sufficiently correct to be accepted or adopted for the purposes of the partition, he shall make an order to that effect, and shall fix a day on which to determine the general arrangement of the partition, and shall publish a notification in the manner prescribed by section 134, calling on all the proprietors to be present on the day so fixed, such day being not less than thirty or more than sixty days after the publication of the notification in his office, and shall serve a notice to the same effect on each proprietor or his agent.

PART VI.

OF PARTITION BY AMICABLE ARRANGEMENT OR BY ARBITRATION.

64. On the date fixed under the last preceding section, if a petition to that effect signed by all the recorded proprietors shall have been presented, the Deputy Collector may allow such proprietors to make a private partition of the estate amongst themselves on the basis of the papers which have been accepted or adopted for the purposes of the partition by the Deputy Collector, or may refer the partition to be made by an arbitrator or arbitrators on such basis.

If the proprietors who have elected to make such private partition shall fail to make the same within such time as may be fixed by the Deputy Collector, the Deputy Collector may refer the partition to be made by an arbitrator or arbitrators, or may make the partition himself.

65. Whenever any partition shall have been referred to arbitration, the proceedings shall be conducted in accordance with the provisions of sections 313 to 325 (both inclusive) of Act VIII of 1859 (*an Act for simplifying the procedure of the Court of Civil Judicature not established by Royal Charter*) as far as those provisions are applicable, and except as herein otherwise expressly provided.

66. The arbitrators shall deliver, within a time to be fixed by the Deputy Collector, which time may be further extended by him, a full and complete paper of partition, in such form as may be prescribed by the Board for partitions made by the Collector or Deputy Collector.

67. The arbitrators, on delivering the paper of partition as aforesaid, shall be entitled to reasonable fees for their services, the amount of which shall be fixed, with the approval of the Commissioner, by the officer making the reference to arbitration, and shall be considered to form part of the cost of making the partition.

68. Every partition made under the provisions of this part by the parties, or by arbitrators appointed by them, shall be subject to the approval of the Deputy Collector and to the confirmation of the Collector and the orders of the superior revenue authorities; provided that neither the Deputy Collector nor any other authority shall disallow any partition so made on any other ground than that of fraud, or that, in the opinion of the Deputy Collector or such other authority, the partition cannot be confirmed without endangering the safety of the land revenue.

69. Whenever a partition has been made under the provisions of this part, the land revenue shall be assessed by the Collector on each separate estate into which the parent estate is divided by such partition in the manner prescribed by section 6.

70. If the paper of partition be not delivered within the time fixed by the Deputy Collector, or within any further period to which the time may have been extended, the Deputy Collector may withdraw the case from arbitration and may make the partition himself.

PART VII.

OF THE PROCEDURE FROM THE DETERMINATION OF THE GENERAL ARRANGEMENT OF THE PARTITION BY THE DEPUTY COLLECTOR TO THE APPROVAL OF THE PARTITION BY THE COLLECTOR.

71. If no petition shall have been presented under section 64, the Deputy Collector shall, on the date fixed under section 63, or on any other date to which the hearing may have been postponed by a notice posted at the office of the Deputy Collector, consult orally each proprietor present, and endeavour, as far as possible, with the concurrence of the proprietors present, to settle a general arrangement of the partition in accordance with the requirements of this Act.

For this purpose he shall endeavour to obtain from each proprietor an acknowledgment of his acceptance of the rent-roll, map, and any other papers which have been adopted by the Deputy Collector for the purposes of the partition, and shall briefly record the objections of any proprietor who still objects to accept such rent-roll, map, or other papers.

72. If, in consequence of any objections made before the Deputy Collector has settled the general arrangement of his partition as provided in the last preceding section, the Deputy Collector considers it necessary to make further inquiry, he may, by notice to the recorded proprietors, postpone the settlement of the general arrangement of the partition to a date being not less than fifteen days from the service of the notice on any proprietor.

73. If the objections on account of which the said settlement is postponed are such that the person making the same might have made them on an earlier day, the Deputy Collector may award to each proprietor, who shall have attended in person or by agent in accordance with the notice, such sum, not exceeding sixteen rupees, as he shall think fit by way of compensation for such attendance.

The sum so awarded shall be paid by the person making the objections as aforesaid, and may be recovered from him in the manner provided by section 138.

74. If the objections have already been enquired into and disposed of, or are such as not to render necessary any further inquiry and postponement, or when any objections which may require further enquiry have been disposed of, the Deputy Collector shall record an order to that effect, and, after hearing what each proprietor present may urge, shall hold a proceeding determining the general arrangement of the partition and the mode in which the parent estate shall be divided, and, in a general way, the position of the lands which shall be assigned to each of the separate estates.

In determining the general arrangement of the partition, the Deputy Collector shall be guided by the rules which are laid down in Part VIII, and shall direct the partition to be made in the manner which, in his opinion, is on the whole most in accordance with such rules, and most equitable and most convenient to all parties concerned.

75. The general arrangement of the partition, as determined under the last preceding section, shall be submitted for the sanction of the Collector, who shall by notice fix a date for the consideration of the same, not being less than fifteen days after the publication of the said notice in his office, and after hearing and disposing of any objection which may be preferred, shall pass such orders as he may think proper, setting aside, amending, or approving the general arrangement made by the Deputy Collector.

76. When the general arrangement has been approved by the Collector, the Deputy Collector shall proceed to fix the exact boundaries of each separate estate, after considering the wishes which the parties may express in respect thereof.

77. When the Deputy Collector shall have so determined the boundaries, he shall cause to be drawn up a paper of partition specifying in detail the villages and lands which he has included in each of the separate estates, the rental thereof, with any other assets of each separate estate, the name or names of the recorded proprietor or proprietors of each separate estate, any stipulations which may have been made regarding places of worship, tanks, or other matters as mentioned in Part VIII, and the amount of land revenue to be assessed on each separate estate; he shall also prepare a map showing the lands which fall within each separate estate and the boundaries thereof, unless the preparation of such map shall be dispensed with by special permission of the Collector.

78. The Deputy Collector shall submit the partition paper and map as aforesaid and all other papers of the partition to the Collector with a full report of the proceedings taken, the reasons which influenced the Deputy Collector in selecting the lands included in each separate estate, the nature of the accounts upon which the apportionment of the land revenue assessed thereon has been based, and all other particulars material to the case.

79. The Deputy Collector shall at the same time cause to be prepared a separate extract of the portion of the partition paper which relates to each separate estate,

and shall cause to be tendered to any recorded proprietor of a separate estate, or any authorized agent of such proprietor, who may be in attendance at the Deputy Collector's office, the extract which relates to such separate estate;

and the Deputy Collector shall publish a notice at his office calling upon every proprietor to whom or to whose agent an extract from the partition paper has not been tendered as above-mentioned, to take out of the Deputy Collector's office the extract of the portion of the partition paper relating to his separate estate.

If the circumstances of the partition so require, an extract of the map pre-

pared by the Deputy Collector, or a copy of such map, shall be annexed to every separate extract from the partition paper therein mentioned.

80. On receipt of the papers and report mentioned in section 78, the Collector shall cause a notification to be published in the manner prescribed by section 134 fixing a date, not being less than six weeks from the date of the publication of such notification on the parent estate, on which he will proceed to take up the case, and to consider any representations and objections which may be preferred in respect of the partition made by the Deputy Collector, and calling on all parties concerned who may wish to do so, to inspect the papers at his office before such date, and to take copies of any such papers as they may require.

The Collector shall also cause a notice to the same effect to be served on each of the recorded proprietors.

81. On the date so fixed, or on any other date to which the hearing may have been postponed, the Collector shall take into consideration the papers as laid before him, and after calling for any further information which he may deem necessary, and disposing of any objections which shall be made to the proposed partition and allotment of land revenue, may approve the partition as made by the Deputy Collector with such amendment as he may think proper, or return it for amendment to the Deputy Collector who made it, or to another Deputy Collector, or make a fresh partition himself.

The Collector may return the said papers for amendment or enquiry as often as he may think fit.

82. No proprietor who shall have failed to appear before the Deputy Collector in person or by agent on any date fixed for the arrangement of the partition under section 63 or section 72, and no proprietor who shall have failed so to appear before the Collector on any date fixed under either of the two last preceding sections, shall be entitled, at any subsequent time, to make any objection to the orders which may be passed on such dates respectively.

83. When the Collector approves the partition made by the Deputy Collector with amendments, he may cause a fresh partition paper and map to be prepared, or may cause the amendments made by him to be noted on the paper and map submitted by the Deputy Collector.

When the Collector makes a fresh partition himself, he shall cause a fresh partition paper and map to be prepared.

84. Whenever the Collector shall have approved a partition (whether with or without amendments), he shall cause a notice to be served on each of the recorded proprietors that the papers will be submitted at once for confirmation of the partition by the Commissioner, and that any appeals or objections must be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days of the date of the service of the said notice, or, if the Collector has approved the partition with amendments, and the notice requires the proprietor to produce the extract of any partition in order that amendments may be noted thereon, or to take out a fresh extract from the partition paper, as provided in the next succeeding section, then within six weeks of such date.

85. Whenever the Collector shall have approved a partition with amendments, and shall, under section 83, have caused such amendments to be noted on the partition paper and map submitted by the Deputy Collector, the notice to be served on each of the recorded proprietors under the last preceding section shall, in the case of every such proprietor whose separate estate is affected by such amendment, in addition to the particulars mentioned in the said section, require such proprietor to produce before the Collector, within fifteen days of the service of such notice, the extract from the paper of partition which has been

prepared, and any map relating to his separate estate which may have been prepared, under section 79, in order that the amendments made by the Collector in the partition may be noted thereon; and such amendments shall be noted thereon by the Collector accordingly, and such extract and map shall be returned to the proprietor who produced them.

Whenever the Collector shall have caused, under section 83, a new partition paper and map to be prepared, he shall order separate extracts from the portions of the partition paper which relate to each separate estate, and maps, if necessary, to be prepared as required by section 79, and in such case the notice served under the last preceding section shall, in addition to the particulars mentioned in that section, declare the extracts and maps which were furnished or offered to proprietors under section 79 to be cancelled, and shall require the recorded proprietors to take out of the Collector's office such extracts and maps relating to their respective separate estates.

86. As soon as practicable after the issue of the notice under section 84, the Collector shall forward to the Commissioner all papers relating to the partition as approved or as made by the Collector.

PART VIII.

OF THE GENERAL PRINCIPLES ON WHICH PARTITIONS SHALL BE MADE.

Rules applicable to the partition of lands which are held by the proprietors in common tenancy.

87. Each separate estate shall be made as compact as is compatible with the primary object of making an equitable partition among the proprietors, and with the other provisions of this part, but no partition made or approved by a Collector shall be set aside on the ground only that the separate estates are not compact.

88. In selecting the villages or lands to be assigned to each separate estate formed out of a parent estate which has been held in common tenancy, the Collector shall take into consideration
the advantages or disadvantages arising from situation;
the vicinity of roads, railways, navigable rivers, or canals;
the nature and quality of the soil and produce;
the quantity of cultivable and uncultivable waste land;
the facilities for irrigation;
the state of the embankments and water-courses;
liability to accretion and diluvion;
and any other circumstances, affecting the value of the lands.

89. If a dwelling-house belonging to one proprietor is situated on any land which it may be necessary to include in the separate estate of another proprietor, the owner of such house may retain occupation thereof with the offices, buildings, and grounds immediately attached thereto, upon agreeing to pay rent for the land occupied by such dwelling-house, offices, buildings, and grounds to the proprietor of the separate estate in which such land is included. The limits of the land so occupied and the rent to be paid for it in perpetuity shall be fixed by the Deputy Collector, and shall be stated in the paper of partition.

In every such case a defined pathway shall, as far as possible, be secured to the owner of the house, leading from his house to some portion of the separate estate allotted to him.

90. Whenever the Deputy Collector shall think fit, he may apply the rule contained in the last preceding section to gardens, to orchards of trees, to land planted with bamboos, and to any other lands which, in his opinion, are of special value to the proprietor in whose occupation they are found to be, in consequence of improvements made by such proprietors or of the particular use to which such lands are put.

91. The rent fixed in perpetuity on any land by the Deputy Collector under either of the two last preceding sections shall be considered to be the rental of such land for the purposes of the partition.

92. Whenever the dwelling-house of one proprietor, with the offices, buildings, and grounds immediately attached thereto, shall have been included in the separate estate of another proprietor, and the annual rent to be paid in perpetuity in respect of the land occupied thereby shall have been fixed by the Deputy Collector and stated in the paper of partition, the proprietor whose dwelling-house, offices, buildings, and grounds have been included as aforesaid may apply to the Deputy Collector for permission to redeem the annual rent so fixed, and the Deputy Collector shall give such permission, unless he shall be of opinion that such redemption would endanger the safety of the land revenue for the payment of which the separate estate in which such dwelling-house, offices, buildings, and grounds have been included will be liable.

93. If the Deputy Collector shall see no such reason to refuse his permission to the redemption being made, he shall certify the amount payable by such proprietor in redemption of such annual rent; and such amount shall be calculated and fixed by the Deputy Collector at ten per centum above the sum which would be required to purchase, at the market prices then prevailing, so much stock of the Government loan which was last issued as would yield an annual amount of interest equal to the annual land rent fixed by the Deputy Collector under section 89.

94. The proprietor desiring to redeem the rent as aforesaid, may pay to the Deputy Collector the amount so certified at any time before possession is given to the several proprietors of the separate estates allotted to each, as provided in section 123, but not after such possession has been given.

95. On receipt of such payment, the Deputy Collector shall give notice to the proprietor in whose separate estate such land is situated that such payment has been made, and that the sum will be paid to him or to his authorised agent on application; and that from the date on which possession as aforesaid may be given, the proprietor who has redeemed the rent of such land will be entitled to hold such land as a rent-free tenure secured against the proprietor of the estate and against any auction purchaser at a sale for arrears of revenue, including the Government; and from such date the lands shall be so held as a rent-free tenure.

96. The Deputy Collector shall at the same time also give notice to the Collector of the district of the creation of such tenure; and the Collector of the district shall thereupon cause such tenure to be specially registered in the manner provided by section 42 of Act XI of 1859, or by any similar law for the time being in force.

97. When two or more of the separate estates shall consist of the same proportions of the parent estate, the Deputy Collector may, if he thinks proper, direct the parties entitled thereto respectively to draw lots in his presence for the equal separate estates which have been formed by assignment of lands, unless the recorded proprietors of the equal shares shall agree among themselves as to the allotment of the equal separate estates and shall present a petition to that effect; or unless for any other reason the Deputy Collector shall, with the sanction of the Collector, think proper to assign the equal separate estates to the proprietors of the equal shares without causing lots to be drawn.

98. When the aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares, the Deputy Collector, with the sanction of the Collector, may cause such aggregate shares to be treated as one share for the purpose of determining by lots as aforesaid which portion of the parent estate shall be assigned to each proprietor as his separate estate ;

and may decide which shares shall be formed into one aggregate share for the purpose of causing such lots to be drawn ;

and may cause lots to be drawn in like manner as often as he shall think proper for such purpose.

And after lots shall have been drawn once (or more than once if necessary), as aforesaid, the Deputy Collector shall proceed to divide the portion of the parent estate which has fallen by lot, to each aggregate share, among the proprietors of the different shares which were formed into such aggregate share for the purpose of drawing lots, and shall assign to every such proprietor his separate estate within such portion in such position as the Deputy Collector may think proper.

Provided that lots shall in no case be drawn until after full opportunity shall have been given to the proprietors to advance their objections in respect of the papers accepted as the basis of the partition and in respect of the assets of the different lands as stated in such papers, and until any such objections which may have been made shall have been disposed of.

Illustrations.

I.—The partition of a parent estate is being made into the following shares :—

8 annas.
4 annas.
3 annas.
1 anna.

For the purposes of drawing lots, the 4 annas, 3 annas, and 1 anna share may be taken together, and considered to be an aggregate 8 annas share.

The Deputy Collector will divide the parent estate into two halves of equal value, and will then cause lots to be drawn, in order to determine which of the two halves shall be assigned to the proprietors of the integral 8 annas share, and which shall be divided among the proprietors of the 4 annas, 3 annas, and 1 anna shares.

Subsequently, if necessary, the Deputy Collector may again cause lots to be drawn by the proprietor of the 4 annas share on the one hand, and the proprietors of the aggregate share made up by taking together the 3 annas share and the 1 anna share.

II.—The partition is being made of a parent estate into the following shares :—

6 annas.
4 annas.
3 annas.
2 annas.
1 anna.

Two tracts in the estate may first be marked off, the value of each being equivalent to a 6 annas' share ; and then, for the purpose of drawing lots in respect of the assignment of these two tracts, the 4 annas share and the 2 annas share may be taken together as an aggregate 6 annas' share, and lots may be drawn between the proprietor of the aggregate 6 annas share so formed on the one hand, and proprietor of the integral 6 annas' share on the other.

One of the two 6 annas' tracts having thus been finally assigned to the proprietor of the integral 6 annas' share, the Deputy Collector will proceed to assign the rest of the estate among the remaining shares ; and he may again, for the purpose of causing lots to be drawn, mark off two tracts, the value of each of which shall be equivalent to 5 annas of the parent estate, and may cause lots to be drawn for these two tracts between the proprietors of the 4 annas share and the 1 anna share taken together as an aggregate 5 annas' share on the one hand, and the proprietors of the 3 annas' share and the 2 annas' share taken together as another 5 annas' share on the other.

Finally, their separate estates will be assigned to the proprietor of the 4 annas' share and of the 1 anna share respectively, within the tract which fell to them jointly by lot ; and their

separate estates will be assigned to the proprietors of the 3 annas share and of the 2 annas share respectively within the tract which fell to them jointly by lot. *

99. The Deputy Collector may, by a notice served as provided in section 135, require any proprietor in respect of whose share lots are to be drawn as provided in either of the two last preceding sections, to attend at the office of the Deputy Collector in person or by authorised agent at a time to be fixed by the Deputy Collector for the purpose of drawing lots;

and, may similarly require the proprietors of any share which he may have ordered to be formed into an aggregate share for the purpose of drawing lots, jointly to appoint an agent to draw lots on their joint behalf; and if at the time fixed for drawing such lots such proprietors have failed to agree to any such joint appointment, or shall fail to cause the attendance of an agent authorised to act jointly for all such proprietors, all such proprietors shall be deemed to have failed to comply with the Deputy Collector's requisition.

100. Whenever any proprietor or proprietors shall have failed to comply with a requisition of the Deputy Collector under the last preceding section, the Deputy Collector may appoint a person to draw lots on behalf of such proprietor or proprietors.

Rules applicable to the formation into separate estates of lands which are held by proprietors in severalty.

101. Whenever in any parent estate a division of the lands thereof has been made by private arrangement of the proprietors of such estate, and in accordance with such arrangement each proprietor is in possession of separate lands held in severalty as representing his interest in such parent estate, the joint application presented to the Collector by all the recorded proprietors of such estate as required by section 12 may be to the effect that a partition of such estate be made by assigning to each proprietor or to two or more proprietors jointly as his or their separate estate, the lands of which they are in separate possession in accordance with such arrangement, and also that each separate estate so formed be made liable for such portion of the entire land revenue of the parent estate as was paid by the proprietor or proprietors thereof under the private arrangement aforesaid.

102. The Deputy Collector who is appointed to carry out the partition in accordance with such application shall satisfy himself that the assets of each separate estate which it is proposed to form are sufficient to secure the payment of the annual amount of land revenue for which it is proposed to make such separate estate liable; and if the Deputy Collector be satisfied that in this respect, and with reference to all the circumstances of the case, the partition of the lands and the assessment of the revenue thereon may be made in the manner proposed without endangering the safety of the revenue, the Deputy Collector shall submit the case with his opinion thereon, and the reasons of which such opinion is founded, to the Collector, who may admit or reject the said application.

103. If the Collector admits the said application such admission shall be deemed to be the Collector's approval of the general arrangement of the partition as provided in section 75, and the Deputy Collector shall proceed to complete the partition accordingly.

104. If the Deputy Collector, who is appointed to carry out the partition in accordance with a joint application under section 101, is not satisfied that the partition of the lands and the assessment of the revenue payable thereon can be made in the manner proposed without endangering the safety of the public revenue, or if the Collector rejects the application for such partition, the Deputy Collector shall refuse to make the same.

105. Whenever the proprietors of an estate are, in accordance with a private arrangement as aforesaid, respectively in possession of separate lands held in severalty as representing their respective interests in the estate, the joint application presented to the Collector by all the recorded proprietors of the estate, as required by section 12, may be to the effect that a partition of such estate be made by assigning to each proprietor, or to two or more proprietors jointly, as his or their separate estate, the lands of which they are in possession in accordance with such arrangement, and that the land revenue for which the parent estate is liable may be apportioned among the separate estates so formed in accordance with the provisions of section 6.

A joint application under this section may be made notwithstanding that a joint application under section 101 has been refused in respect of the same estate.

106. Whenever the Deputy Collector who is appointed to carry out a partition shall find that, in accordance with a private arrangement made by the proprietors of an estate, the proprietors respectively, or any of the proprietors, are in possession of separate lands held in severalty as representing portions only of their respective interests in the parent estate, while other lands of the parent estate are held in common tenancy between such proprietors, a joint application as mentioned in section 12 shall not be necessary to authorise the Collector to make a partition of the estate, but the Deputy Collector shall allot to the separate estate of each proprietor the lands of which such proprietor is found to be in possession in severalty in accordance with such private arrangement.

Lands held in the occupation of the several proprietors of an estate as sir, khamar, or nij-jote, or under any other similar denomination, shall not be deemed to be lands held in severalty as representing portions of their respective interests in the parent estate within the meaning of this section, which applies only to cases in which there has been a *bond fide* division, by private arrangement among the proprietors, of lands held by tenants.

107. Notwithstanding anything contained in the last preceding section, the Collector may cause any transfer of lands agreed to by the parties to be made from the possession of one proprietor to that of another.

Rules applicable both to lands held in common tenancy and to lands held in severalty.

108. Places of worship, burning grounds, and burial grounds which have been held in common previous to the partition of an estate, and lands of which the proceeds have been assigned by the proprietors jointly for religious, charitable, or public purposes, shall continue to be held in common, unless the proprietors shall otherwise agree amongst themselves, in which case they shall state in writing the agreement into which they have entered, and the Deputy Collector shall enter a note of the agreement in the paper of partition.

109. Tanks, wells, water-courses, and embankments shall be considered as attached to the land for the benefit of which they were originally made.

In cases in which, from the extent, situation, or construction of such works, it shall be found necessary that they should remain the joint property of the proprietors of two or more of the separate estates, the paper of partition shall specify, as far as the circumstances may admit, the extent to which the proprietors of each of such estates may make use of the same, and the proportion of the charges for repairs to be borne by them respectively.

110. Whenever the Deputy Collector shall find in the parent estate lands which are actually held rent-free (whether the proprietors of the estate do or do not claim a right to receive rent from such lands), the Deputy Collector shall

make no division or assignment of such lands among the separate estates, but shall specify in the partition papers and proceedings that such lands are left appertaining jointly to all the separate estates which are formed out of the parent estate, in the proportion which each separate estate bears to the parent estate.

Provided that such lands or any of them may be allotted among the different separate estates with the consent of all the recorded proprietors of the parent estates, but not otherwise.

111. Whenever the Deputy Collector shall find in the parent estate any lands which are held at a fixed rent on a patni or other permanent intermediate tenure falling within exception 2 or exception 3 of section 7, the Deputy Collector may either

(1) assign the lands which are held on such tenure and the assets thereof entirely to one or more of the separate estates, the rental being calculated as provided in exception 2 or in exception 3 (as the case may be) of section 7; or

(2) leave such lands unassigned to any separate estate, and specify in the partition paper and proceedings that the lands are left appertaining jointly to all the separate estates which are formed out of the parent estate in the proportion which each separate estate bears to the parent estate. In the event of such lands being so left undivided, the Deputy Collector shall assign to each separate estates such share of the rental of the tenure as shall bear the same proportion to the entire rental of the tenure, as the separate estate bears to the parent estate.

In dealing with a tenure under this section, the Deputy Collector shall take into consideration the extent of the lands comprised in the tenure, and all other circumstances of the case.

112. Whenever any lands are held in common between the proprietors of two or more estates, one of which is under partition in accordance with the provisions of this Act, the Deputy Collector shall first allot to the estate under partition a portion of such common lands of which the assets are in proportion to the interest which the proprietors of such estate hold in the said common lands; and all the provisions of this Act in respect of the allotment between the shareholders in one estate, of lands which are held jointly by such shareholders, shall, as far as possible, apply to the allotment of the proportionate share of such common lands to the estate under partition;

and, in respect of the service of notices, hearing of objections, and all other procedure in view to such allotment, the proprietors of the estate under partition, and the proprietors of all other estates who have an interest in the said common lands, shall be deemed to be joint proprietors of a parent estate consisting only of the lands so held in common.

Provided that all expenses of any division of lands so held in common between the proprietors of two or more estates shall be deemed to be expenses of making the partition of the estate which is under partition, and shall be leviable as provided by this Act from the proprietors of such estates, and the proprietors of any other estate having an interest in such lands shall not be required to bear any portion of such expenses.

113. Notwithstanding anything contained in the last preceding section, if it shall appear to the Commissioner, on the report of the Collector or otherwise, that the proceedings for such division have been unnecessarily delayed, and the cost of such division enhanced by obstacles vexatiously put in the way of the completion of such division by any proprietor of any estate other than that under partition, or by want of due diligence on the part of any such proprietor in carrying out any requisitions made upon him, the Commissioner may direct that such sum as he shall think fit shall be levied from every such proprietor who is responsible for such delay or additional cost, and every sum so levied shall

be taken in diminution of the amount payable by the proprietors of the estate under partition as costs of such partition.

114. The allotment to the estate under partition of the proportionate share of the lands so held in common shall be submitted for the approval of the Collector, who may confirm, amend or reject the same, and in the case of rejection, may make or direct to be made another allotment.

115. As soon as the allotment to the estate under partition of a proportionate share of the said lands shall have been approved by the Collector, the lands so allotted shall be dealt with in every respect as if they were held in common tenancy by such of the proprietors of the estate under partition as were found to hold interests in the common lands.

116. If a dispute or doubt shall be found to exist as to whether any lands form part of the parent estate, the Deputy Collector shall enquire into the fact of possession, and shall report his conclusions, with the reasons thereof, to the Collector; whereupon

the Collector may (whether the possession of disputed lands is with the proprietors of the parent estate or otherwise) order that the partition be struck off the file, and in that case no application for a partition of the said estate shall be admitted until the applicant can show that the dispute or doubt has been decided by a court of competent jurisdiction, or has been amicably settled;

or if the Collector shall find that possession of the disputed lands is with the proprietors of the parent estate, and if it shall appear to him that the claim of the other parties to the right in such lands is untenable, he may order that the partition shall proceed, and that the disputed lands be treated as part of the estate under partition.

Provided that no partition shall be made under this section, if such partition would involve the assignment to any separate estate of such a quantity of the disputed land that the removal of such land from such estate would, in the opinion of the Collector, endanger the safety of the land revenue for which such estate would be liable after the partition.

117. If after a partition has been completed in accordance with an order passed by the Collector under clause 3 of the last preceding section, the proprietor of any separate estate shall be dispossessed by a decree of a court of competent jurisdiction of any lands which may have been assigned to his estate by the partition, such proprietor shall not be entitled to claim any modification of the partition (which shall hold good), but shall be entitled to recover from the proprietors of the other separate estates formed by the partition such compensation as may be fair and equitable, having regard to the reduction in the proportionate value of his separate estate which is caused by such dispossession;

and such compensation may be recovered in a court of competent jurisdiction from the proprietors of those separate estates on which a proportionate share of the total loss caused by the order of dispossession does not fall.

PART IX.

OF THE PROCEDURE BEFORE THE COMMISSIONER UP TO THE COMPLETION OF THE PARTITION.

118. If no appeal or objection shall be presented within the time allowed by section 84, the Commissioner may proceed to consider the case without issue of any notice, and may confirm the partition made by the Collector.

119. If it shall appear to the Commissioner that the proceedings of the Collector should be amended, or if a petition of appeal or an objection shall have been presented within the time allowed by section 84, the Commissioner shall fix

a day for hearing and disposing of the case, and shall cause a notification of the same to be published and a notice of the same to be posted up in his own office.

120. On the day so fixed, which shall not be less than thirty days after the publication of the said notification at the office of the Collector, or on any subsequent day to which the hearing of the case may extend, or on any subsequent day to which the hearing may have been postponed by a notice published in his own office, the Commissioner shall, after hearing and disposing of all objections, and calling for any further information which may be necessary, either confirm the partition as made by the Collector or amend the same, or return the papers of the partition to the Collector for any changes the Commissioner may think proper to be made.

If the partition is returned to the Collector for amendment, the Collector shall proceed to make the said amendments or to cause them to be made in the same manner as if he had himself passed such orders on a partition submitted to him for approval by a Deputy Collector.

121. The Commissioner may, before confirming a partition, return the papers for amendment or inquiry as often as he shall think fit, and as often as he shall so return them the procedure prescribed in the three last preceding sections shall be followed.

122. After the expiration of not less than sixty days from the date of the order of the Commissioner confirming a partition, or, if an appeal has been preferred to the Board, or if any proceedings in respect of the partition be pending before the Board, then on receipt of the final order of the Board determining that the partition as sanctioned by the Commissioner shall not be disturbed, the Collector shall cause to be published in his office, and in some conspicuous place in each of the estates separately constituted by such order, a notice that the partition has been finally confirmed as it was sanctioned by the Commissioner, or with any amendments or alterations, as the case may be.

If the partition as finally sanctioned involves any amendments which may conveniently be made on the extracts of the partition paper and on any maps which have been prepared and delivered or offered by notice to the recorded proprietors as required by section 79 or section 85, the Collector shall cause a notice to be served on every recorded proprietor whose estate is affected by such amendments requiring him to produce such extracts and maps in order that such amendments may be noted on them;

and if the alterations made in the partition as finally sanctioned be such as to make it desirable to prepare fresh extracts and maps as aforesaid, the Collector shall cause such fresh extracts and maps to be prepared; and shall cause a notice to be served on each proprietor declaring the extract and map which was furnished or offered to him under section 79 or section 85, as the case may be, to be cancelled, and requiring him to take out of the Collector's office the fresh extract and map which have been prepared.

123. The Collector shall then proceed to give the several proprietors possession of the separate estates allotted to each, and, if necessary, may require the assistance of the Magistrate in giving such possession;

and shall cause to be served on every recorded proprietor of a separate estate a notice informing him that from the date specified in such notice the separate estate assigned to him (as described in the extract from the partition paper prepared and delivered or offered to him under section 79, section 85, or the last preceding section, as the case may be) will be deemed to be separated from the parent estate, and to be separately liable for the amount of land revenue specified in such notice, and calling upon him to enter into a separate engagement for the payment of such revenue.

124. The date specified in such notice shall not be more than three months after the proprietors have been put in possession of their respective separate estate as therein provided.

125. From the date specified in such notice, each separate estate shall be borne on the revenue roll and general register of the Collector as a distinct estate separately liable for the amount of land revenue assessed upon it under this Act; and shall be so liable, whether the proprietor have executed an agreement for the payment of the amount of land revenue so assessed upon the said estate, or whether he shall have failed to execute such agreement.

126. The Collector may direct the construction of such boundary marks as he may think proper to distinguish the lands of each separate estate, and the cost of such boundary marks shall be deemed to be expenses of the partition.

Boundary marks erected under this Act shall be assigned to zemindars, or to zemindars jointly with tenure-holders, for preservation, as provided in the second clause of section 29 of "The Bengal Survey Act, 1875," and after they have been so assigned, the provisions of sections 19, 20, and 52 to 57 (both inclusive) of the said Act shall apply to such boundary marks.

PART X.

MISCELLANEOUS.

127. The Deputy Collector, with the consent of all the parties concerned, may refer to arbitration any point arising in the course of a partition; and the provisions of sections 65 and 67 shall, as far as possible, be applicable to such references.

128. If any proprietor of an estate held in common tenancy and brought under partition in accordance with the provisions of this Act shall have given his share or a portion of it in patni or other tenure or lease, such tenure or lease shall hold good, as regards the lands finally allotted to the share of the lessor, and only as to such lands.

Illustrations.

I.—A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a patni tenure of the whole of his interest in the estate, entitling B, as long as such estate is held in common tenancy, to collect one-fourth of the rent payable by every raiyat on the estate;

Partition of the said estate is made under this Act, and certain specific lands are assigned to A as his separate estate;

B will become patnidar of the entire separate estate which has been assigned to A, and will be entitled to collect one-fourth of the rent from the riyats on that estate.

II.—A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a patni tenure of one-half of his share in the estate, entitling B, as long as such estate is held in common tenancy, to collect one-eighth of the rent payable by every raiyat on the estate;

Partition of the estate is made under this Act, and certain specific lands are assigned to A as his separate estate;

B will become patnidar of one-half of A's separate estate, and will hold his patni in common tenancy with the half of A's interest which A has not given in patni, so that B will be entitled to collect one-half of the rent payable by every raiyat on A's estate, and A will be entitled to collect the other half.

129. If two or more estates shall come into the possession of one proprietor or of the same body of proprietors, such proprietor or body of proprietors after being recorded as proprietors, may apply to have such estates united, and to hold them as a single estate.

130. Such application shall be made in writing to the Collector, and the

Collector shall, not less than thirty days after the issue of a notification of such application (provided he sees no objection), comply with the same, and cause the necessary entries to be made in the records of his office, and shall report the case to the Commissioner.

131. Whenever any separate estate created under this Act shall fall in arrear so as to require a sale of the land for the discharge of the arrear at any period within twelve years of the date of the confirmation of the partition, the Collector shall, if possible, ascertain the cause of the estate having fallen into arrear, and shall enquire whether such arrear has been caused by any fraudulent or erroneous allotment of the assessment or assignment of lands at the time of the partition, and shall make a report upon the case to the Commissioner for such action as the Commissioner may think proper.

132. If it shall be proved to the satisfaction of the Lieutenant-Governor at any time within twelve years from the date of the final confirmation of a partition by the Commissioner or by the Board, as the case may be, that through any fraud or error at the time of making the partition the assets of the lands assigned to any separate estate were not in proportion to the amount of land revenue for which such estate was made liable, or that the amount of land revenue assessed on any separate estate was not in proportion to the assets of the lands assigned to such estate, the Lieutenant-Governor may order a new allotment of the land revenue upon the separate estates in accordance with the principles prescribed in this Act, on an estimate of the assets of each such estate as they stood at the time of the partition, such estimate being made on such evidence and information as may be procurable respecting the same.

133. Whenever the Lieutenant-Governor shall pass an order for the re-allotment of the land revenue on any separate estate under the last preceding section, the Lieutenant-Governor may direct that the proprietors whose estates are found to have been under-assessed shall, for each year during which they have held possession of the separate estates, be required to pay to the recorded proprietors of the estates which have been over-assessed, a sum equal to the annual amount in which the latter shall be found to have been over-assessed, and in default of payment the amount shall be leviable as provided in section 138.

No order passed by the Lieutenant-Governor under this section shall be liable to be contested in any court.

134. Every notification required to be published in and by this Act shall, unless it is otherwise specially directed, be published by posting up copies of the same at the office of the Collector, and of the Deputy Collector who is making or has made the partition, at the mál cutcherry or mál cutcherries (if any) of the proprietors of the parent estate, and at one or more of the principal villages on the said estate.

135. Every notice in and by this Act required to be served on any person may be served—

- (1) by delivering the same to the person to whom it is directed, or, on failure of such service, by posting the same on some conspicuous part of the house in which the said person usually resides, or by delivering the said notice to a general agent of the person to whom such notice is directed, or to any person who has been appointed in that behalf, or who has been appointed an agent of the person to whom the notice is directed for the general purposes of any partition under this Act; or
- (2) by sending a registered letter containing such notice directed to the said person at his usual place of abode or to the place where he may be known to be residing; or

- (3) by posting a copy of the notice at any māl cutcherry of the person to whom the notice is directed ;
 or, if no such māl cutcherry be found, and if the notice cannot be served in any of the other modes mentioned in this section, on some conspicuous place on the estate to which such notice relates.

In all cases where two or more persons are joint applicants for the separation of an estate to be held by them jointly as a separate estate, service of notice under this section on any one such joint applicant shall be deemed to be good and sufficient service on each and all of such joint applicants.

136. Provided the directions of this Act be in substance and effect complied with, no proceedings under this Act shall be affected by reason of any mistake or by reason of any other informality, unless any person has suffered, or is in danger of suffering, material injury in consequence of such mistake or informality ;

and no proceedings under this Act shall be affected by reason of the omission to issue any notification required by this Act, or to service any notice on any person whose name is not recorded on the Collector's registers as proprietor of the estate in respect of which the notice is required to be served.

137. If any proprietor or other person shall fail to comply, within the time fixed by a notice served on him as by this Act provided, with any requisition made upon him under this Act by the Collector or Deputy Collector, the Collector or Deputy Collector may impose upon him such daily fine as he may think fit, not exceeding fifty rupees ;

and such fine shall be payable daily until the requisition is complied with, and the Collector or Deputy Collector may proceed from time to time to levy the amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending ;

Provided that, whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner, and no further levy in respect of such fine shall be made otherwise than by authority of the Commissioner.

138. Except as herein expressly otherwise provided, all fees, fines, costs, and other sums ordered to be paid by any person under this Act, shall be deemed to be demands under section 1 of Bengal Act VII of 1868 (*an Act to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue*), and shall be leviable as such.

139. For the purpose, of any enquiry under this Act, the Collector and Deputy Collector shall, in addition to every power conferred specially by this Act, have power to summon and enforce the attendance of witnesses, to examine witnesses, and to compel the production of documents by the same means (as far as may be), and in the same manner as is provided in the case of a court under the Code of Civil Procedure.

140. All powers and functions which are assigned by this Act to a Deputy Collector may be exercised and discharged by the Collector ; and whenever it is provided by this Act that any act done, or order made by a Deputy Collector shall require the sanction of the Collector, or shall be appealable to the Collector, if such act shall have been done or such order shall have been made by the Collector, it shall be deemed to have been sanctioned by the Collector, or to have been confirmed by the Collector in appeal, as the case may be.

141. The Lieutenant-Governor may vest any Collector or Deputy Collector with all or any of the powers which, under the provisions of any law for the time being in force, might be exercised by them respectively, or might be conferred on them respectively, if they were making a settlement of the parent estate.

Such powers may be conferred either generally in respect of all estates in the partition of which the Collector or Deputy Collector may at any time and in any district be engaged, or specially in respect of any particular estate.

142. An appeal, if presented within one month from the date of the order appealed against, shall lie to the Collector against every order of a Deputy Collector,

(a) directing, under section 41, by whom the costs of an enquiry held in consequence of an objection preferred shall be paid;

(b) accepting or adopting any papers under section 63 for the purposes of a partition;

(c) refusing, under section 68, to confirm a partition made by the parties or by arbitrators;

(d) fixing, under section 89, the limits of land and the rent to be paid for it in perpetuity;

(e) refusing, under section 104, to make a partition as applied for by the joint applicants;

(f) passed under section 110, in respect of lands held rent-free, or under section 111 in respect of lands included in a tenure;

(g) imposing a fine under section 137.

143. An appeal, if presented to the Commissioner, or to the Collector for transmission to the Commissioner, within one month from the date of the order appealed against, shall lie to the Commissioner against every order of the Collector (whether such order be passed by the Collector in the first instance, or in appeal from the order of a Deputy Collector)

(a) having the effect of rejecting an application for the partition of an estate, or for the separation of a share, or of putting an end to proceedings for effecting a partition or separation after the application has been admitted;

(b) directing, under section 31, that an application for partition or separation be admitted;

(c) accepting or adopting any papers under section 63, for the purposes of a partition;

(d) refusing, under section 68, to confirm a partition made by the parties or by arbitrators;

(e) setting aside, amending, or approving the general arrangement of the partition under section 75;

(f) approving, with or without amendment, a partition made by a Deputy Collector, or directing such partition to be amended or a fresh partition to be made, or making a fresh partition under section 81;

(g) fixing, under section 89, the limits of land and the rent to be paid for it in perpetuity;

(h) refusing, under section 102, to allow a partition to be made in accordance with an existing private division;

(i) passed under section 110 in respect of lands held rent-free, or under section 111 in respect of lands included in a tenure;

(k) approving or disallowing, under section 114, the allotment to the estate under partition of a portion of lands held in common tenancy between the proprietors of such estate and the proprietors of one or more other estates;

(l) passed under section 116 as to disputes or doubts regarding land;

(m) imposing or confirming the imposition of a fine under section 137;

(n) imposing any fine amounting to more than fifty rupees, or directing the payment of any costs amounting to more than fifty rupees.

144. An appeal, if presented to the Board, or to the Commissioner for transmission to the Board, within six weeks from the date of the order appealed

against, shall lie to the Board against every order of the Commissioner which confirms, modifies, or reverses any order of the Collector

(a) having the effect of rejecting an application for the partition of an estate, or for the separation of a share, or of putting an end to proceedings for effecting a partition or separation after the application has been admitted;

(b) directing, under section 31, that an application for partition or separation be admitted;

(c) accepting or adopting any papers under section 63 for the purposes of a partition;

(d) approving or disallowing, under section 114, the allotment to the estate under partition of a portion of lands held in common tenancy between the proprietors of such estate and the proprietors of one or more other estates;

and against every order of the Commissioner

(e) directing, under section 40, that any proprietor shall pay more than his proportionate share of the expenses of a partition, when the excess which he is ordered to pay exceeds five hundred rupees;

(f) directing, under section 113, that any sum shall be paid by the proprietor of an estate other than the estate under partition, when such sum exceeds five hundred rupees;

(g) confirming, under section 118 or section 120, or amending or setting aside, under section 120, a partition as made by the Collector;

(j) imposing, or confirming the imposition of any fine amounting to five hundred rupees, or ordering or confirming an order directing the payment of any costs amounting to more than five hundred rupees.

145. Except as provided in the three last preceding sections, no appeal shall lie as of right against any order passed under this Act by any officer; but the proceedings and orders of every Deputy Collector under this Act shall be subject to the supervision and control of the Collector; the proceedings and orders of every Deputy Collector and of the Collector to the supervision and control of the Commissioner; and the proceedings and orders of all revenue officers to the supervision and control of the Board;

and any order, passed and anything done under this Act may be modified, amended, or reversed, by the supervising and controlling authority at any time before possession of their respective separate estates has been given to the several proprietors as provided in section 123, but not after such possession has been given, except as provided in the next succeeding section.

146. Any proceedings of a revenue officer connected with giving possession to the proprietors of their respective separate estates as provided in section 123 may be set aside or amended as above provided by any supervising and controlling revenue authority, provided that such supervising and controlling authority shall within three months of the date on which such possession may have been given, make an order to the effect that such proceedings are under the consideration of such authority.

Such order shall be communicated to the Collector of the district, who shall cause the same to be published by notification in the manner prescribed by section 134.

147. The Commissioner and the Board may pass such orders as they shall think fit in respect of the payment of costs of any appeal which is made to them respectively under this Act.

148. If, in any case in which a Collector or other officer shall exercise jurisdiction under this Act, any person is guilty of the offence of giving or fabricating false evidence, or of forgery, as defined in the Indian Penal Code, or of abetting any of those offences, such Collector or other officer shall have

the same powers in respect of such offence, and of the person charged with committing the same, as are vested by the Code of Criminal Procedure in a civil court, when any such offence is committed before or against such court, or when a document believed to be a forgery is given in evidence in any proceedings in such court.

149. No order of a revenue officer

- (a) refusing to allow a partition on the grounds mentioned in section 11;
- (b) rejecting or directing to be amended an application under section 20;
- (c) made under the first clause of section 32;
- (d) made under Part IV, Part V, Part VI, Part VII, Part VIII (except as provided in the next succeeding section), or Part IX;
- (e) imposing a fine;
- (f) in respect of the payment of costs of any appeal under section 147, shall be liable to be contested or set aside by a suit in any court, or in any manner other than as is expressly provided in this Act.

150. Notwithstanding anything contained in clause (d) of the last preceding section,

any person claiming a greater interest in any lands which were held in common tenancy between two or more estates than has been assigned to him by the order of a revenue officer under section 112 or section 114;

and any person who is aggrieved by any order of a revenue officer passed under section 116;

may bring a suit in a court of competent jurisdiction to modify or set aside such orders of the revenue officer.

151. In the execution of the duties vested in the Board by this Act, the Board shall be guided by such orders or instructions as they may from time to time receive from the Lieutenant-Governor.

152. The Board may, from time to time, make rules, not being inconsistent with this Act—

(a) to regulate the expenses of effecting partitions, or the amount of fees to be levied in respect of partitions, the allotment of the same among the proprietors, and the instalments in which, and the times at which, the same shall be levied under Part IV;

(b) to regulate the receipts, disbursements, and management of any "estates' partition fund" formed under section 45;

(c) to regulate the employment and remuneration of amins and other subordinate officers appointed under Part IV, to enable the officer making the partition to keep himself informed of the proceedings of such officers, and to exercise a proper control over them;

(d) to regulate the form in which the partition papers shall be framed under section 66 and section 77;

(e) and generally for the guidance of officers in conducting partitions under this Act.

SCHEDULE.

See section 2.

Number and year.	Subject or abbreviated title.	Extent of repeal.
Regulation XI of 1811 ...	For extending period of revising jama on certain lands.	So much as has not been repealed.
Regulation XIX of 1814 ...	Consolidating Regulations respecting partition of estates.	Ditto.
Act XX of 1836 ...	Quashing of Butwaras.	Ditto.
Act XI of 1838 ...	Remuneration of persons effecting a partition.	Ditto.

PART XI.

DRAINAGE.

ACT VI, B. C., OF 1880; ACT V, B. C. OF 1871.

ACT NO. VI, B. C. OF 1880.

An Act to provide for the drainage and improvement of lands.

42. Every landholder who has been charged with any sum by a report published as aforesaid may, after he has paid or engaged to pay the same,—

- (a) proceed under any law for the time being in force to enhance the rents of any person holding immediately from him any land, the productive powers of which have been increased by any works carried out under this Act, provided that any such person may at his option elect to pay under clause (b) of this section : or
- (b) recover such sum or any part thereof, according to the proportions hereinafter provided, with interest at the rate of five per cent. per annum from the date of payment by him of any portion thereof, from the persons holding immediately from him lands in respect of which such sum has been declared payable, and which have been benefited by any scheme or works carried out under this Act.
- (c) The sum recoverable by such landholder from each such person under clause (b) in respect of the lands of each class shall bear the same proportion to the sum charged upon such landholder in respect of all lands of that class as the area of the lands of that class which are held by such person bears to the area of the lands of the same class in respect of which the landholder has been charged. No person from whom a landholder is authorized to recover any sum under this section shall be liable to pay in any one year more than one-tenth part of the total sum so recoverable from him, and no person shall be liable to pay in one year more than the increased annual value of the lands in respect of which the payment is made.

43. Any superior tenant, who has made any payment to a landholder under the provisions of clause (b) of section 42, may

- (a) proceed under any law for the time being in force to enhance the rents of any person holding directly from him lands the productive powers of which have been increased by any works carried out under this Act, provided that any such person may at his option elect to pay under clause (b) of this section : or
- (b) recover the sum or part of the sum which has been so paid by him accordingly to the proportions and subject to the rules laid down in clause (c) of section 42, with interest at the rate of five per centum per annum from the date of payment by him of any portion thereof, from the persons holding directly from him lands in respect of which the payment has been made, and which have been benefited by any scheme or works carried out under this Act.

44. (1) The sum payable to a landholder or superior tenant in any one year under clause (b) of section 42 or under clause (b) of section 43 shall be payable by equal instalments upon the days appointed for the payment to such landholder or superior tenant of the rent of the lands concerned, and shall be recoverable as if the same were an arrear of rent.

(2) If such landholder or superior tenant and any person holding lands directly from him cannot agree as to the amount which such person shall pay, such landholder or superior tenant may serve such person through the Collector with a notice setting forth the amount which he claims, and requiring such per-

son, within one month after the service of such notice, to pay the amount claimed or enter into an engagement for the payment thereof by instalments extending over a period of not more than ten years, or appear before the Collector and object.

(3) If such person do not within the said period of one month appear and object, the amount set forth in such notice shall be recoverable with interest at five per centum per annum. If such person appear and object, the Collector shall dispose of such objection, and his decision shall be final. The Collector may direct that any sum of money payable under his decision, together with any cost awarded by him, be paid by instalments extending over a period of not more than ten years. The provisions of clause (1) of this section shall apply to every sum payable according to an order of the Collector passed under this section.

45. No person from whom any sum has been recovered under clause (b) of section 42 or under clause (b) of section 43 shall be subject to any claim for enhanced rent on account of the benefit caused by the works to his lands.

59. The following portions of this Act shall apply to any scheme or works carried out under the provisions of Bengal Act V of 1871, that is to say—

- (a) As to the method of realizing sums due on account of the cost of the works, sections 31, 38, 39 and 40.
- (b) As to the recovery by landholders or superior tenants of the cost of the works, from persons holding land under them, Part V.
- (c) As to other matters, Part VI.

ACT V (B.C.) OF 1871.

(THE HOOGHLY AND BURDWAN DRAINAGE ACT.)

33. Every proprietor of land charged with any sum under the provisions aforesaid may, after he shall have paid or entered into an engagement for the same, recover from any person from time to time holding immediately from him any temporary lease or other subordinate tenure benefited by the works in respect of which such payment may be secured or made, an annual sum, calculated at the rate of ten per cent. per annum upon such portion of such payment as shall bear to the entire payment the same proportion as the area of the lands of such person benefited by such works bears to the area of the entire lands of such proprietor benefited by such works.

Such sum to be payable by equal instalments upon the days appointed for the payment of the rent of such tenure, and to be recoverable as if the same were an arrear of rent.

Provided that such proprietor shall not be entitled to recover under this section from any such person as aforesaid more than the entire amount of payment which such proprietor has made or engaged to make with interest thereto at the rate of five per cent. per annum, and that the sum annually recoverable in any case shall not exceed the increase in the annual value of the particular lands benefited.

PART XII.—SURVEY.

ACT V, B. C., OF 1875, (AS AMENDED BY ACT VII B. C. OF 1880).

PART XIII.—EMBANKMENT.

ACT II, B. C., OF 1882.

PART XIV.—IRRIGATION.

ACT III, B. C., OF 1876.

ACT NO. V, B. C., OF 1875.

An Act to provide for the Survey and Demarcation of Land.

* * * * *

38. Every zemindar or tenure-holder to whom any sum is payable under the preceding sections, may recover the same with interest as aforesaid in the manner provided by any law for the time being in force for the recovery of arrears of rent in respect of the tenure for which the sum is due.

ACT II, B. C., OF 1882.

EMBANKMENT.

74. Every zemindar or tenure-holder to whom any sum or instalment thereof is payable under an order made in pursuance of section 68 may recover the same with interest as aforesaid in the manner provided for the recovery of arrears of rent in respect of puthi tenures by the provisions of clauses 2 and 3 of section 8, sections 9, 10, 14, 15, and clauses 1, 2, and 3 of section 17 of Regulation VIII of 1819, as amended by Bengal Act VIII of 1865, or by the provisions of any similar Act for the time being in force; provided that the right or interest of any person holding from the defaulter shall not be affected by any sale held under these provisions.

ACT III, B. C., OF 1876.

THE BENGAL IRRIGATION ACT.

83. Any sum lawfully due under this part (water-rate) either to the Government, or to any person who has entered into agreement to collect dues for the Government, and certified by the canal officers to be so due, shall be deemed to be rent payable on a potta or engagements in respect of the land irrigated, and shall be recoverable as such by the person to whom it is payable. Provided that the claim (if any) for rent in respect of such land shall have priority over any claim for arrears of water-rate so far as regards recovery of rent by the exercise of the power of distraint.

PART XV.—WARDS.

ACT IX, B. C., OF 1879, (AS AMENDED BY ACT III, B. C., OF 1881).

ACT NO. IX OF 1879.

(As amended by Act III, B. C. of 1881.)

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

(Received the assent of His Honor on the 15th April 1879, and of the Governor-General on the 6th June 1879.)

An Act to amend the law relating to the Court of Wards:

Whereas it is expedient to amend the law relating to the Court of Wards within the territories under the administration of the Lieutenant-Governor of Bengal; It is enacted as follows:—

PART I.

Preliminary.

1. This Act may be called the Court of Wards' Act, 1879.

It extends to all the territories under the administration of the Lieutenant-Governor of Bengal, including the scheduled districts of Bengal as defined in the Scheduled Districts' Act, 1874.

It shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General.

2. Bengal Act IV of 1870 (the Court of Wards' Act), section 11 of Act XXXV of 1858, sections 12, 14, and 15 of Act XL of 1858, and so much of section 21 of Act XL of 1858 as provides that the civil court may direct the Collector to take charge of an estate, are hereby repealed.

All persons and properties which at the commencement of this Act are under the charge of the Court of Wards as constituted by Bengal Act IV of 1870, shall be deemed to be under the charge of the Court of Wards as constituted by this Act.

And all persons and properties which at the commencement of this Act are under the charge of the Collector by virtue of an order of the civil court under section 11 of Act XXXV of 1858, or under section 12, section 14, or section 21 of Act XL of 1858, shall from such commencement be deemed to be under the charge of the Court of Wards.

And all rules, prescribed, orders or appointments made, and agreements executed under the Court of Wards' Act, 1870, and now in force, shall, (so far as they are consistent with this Act,) be deemed to be respectively prescribed, made, and executed under this Act.

And all orders and appointments made by Collectors under Act XXXV of 1858 or Act XL of 1858, and now in force, shall (so far as they are consistent with this Act) be deemed to be made under this Act.

And all suits and proceedings now pending, which may have been commenced under the Court of Wards' Act, 1870, or by Collectors under Act XXXV of 1858 or Act XL of 1858, shall be deemed to be commenced under this Act.

3. In this Act, unless there be something repugnant in the subject or context—

"Collector" includes any officer in charge of the revenue jurisdiction of a district;

"The Court," means the Court of Wards;

or when the Court of Wards has delegated any of its powers to a Commissioner or Collector or any other person, it means, in respect of such powers, the Commissioner or Collector or person to whom they are delegated;

"Estate" means of lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land revenue;

"Minor" means a person who has not completed his age of twenty-one years;

"Section" means a section of this Act;

"Ward" means any person who is under the charge of the Court of Wards, or whose property is under such charge.

4. Nothing contained in this Act shall affect any of the provisions of Act XXXIV of 1858 or the jurisdiction, as respects infants, of any High Court of Judicature.

PART II.

Constitution, Jurisdiction, and powers of the Court of Wards.

5. The Board of Revenue shall be the Court of Wards for the territories to which this Act extends.

It shall deal with every person and every property of which it may take or retain charge under this Act, or which may be placed under its charge by order of a competent Court, in accordance with the provisions of this Act.

6. Proprietors of estates shall be held disqualified to manage their own property when they are—

- (a) females declared by the Court incompetent to manage their own property;
- (b) persons declared by the Court to be minors;
- (c) persons adjudged by a competent civil court to be of unsound mind, and incapable of managing their affairs;
- (d) persons adjudged by a competent civil court to be otherwise rendered incapable by physical defects or infirmities of managing their own property.

7. Whenever the sole proprietor of an estate, or all the joint-proprietors of an estate are disqualified as provided in the last preceding section, the Court shall have power to take charge of all the property of every such proprietor or joint proprietor within its jurisdiction, and of the person of any such proprietor or joint proprietor who is resident within its jurisdiction; and also of the person and property of any minor member of the family of any such proprietor or joint proprietor who has an immediate or reversionary interest in the property of such proprietor or joint proprietor.

8. Whenever the circumstances of any ward become such that the Court could not take charge of him or of his property if he were not under its charge already, the Court shall be bound to, release from its charge such person and his property.

9. The Court may in its discretion, in any case in which it is empowered by this Act to take charge of the person and property of any disqualified proprietor,—

- (a) take charge of such property without taking charge of such person;
- (b) refrain from taking charge of any such person or property;
- (c) at any time withdraw from such charge if taken;
- (d) at any time resume such charge, after having withdrawn from it.

10. Whenever a civil court thinks it necessary, under section 9 of Act XL of 1858, to make provision for the charge of the person and property of a minor, whenever a civil court recalls any certificate under section 21 of the said Act, or whenever a person has been adjudged, under Act XXXV of 1858, to be of unsound mind and incapable of managing his affairs,

if the property of such minor or disqualified proprietor consists, in whole or in part, of land or any interest in land, the civil court may apply to the Court of Wards to take charge of the person and property of such minor or disqualified proprietor; and it shall be at the discretion of the Court of Wards to take charge of such person or property, or to refuse to do so.

Nothing contained in sections 12 to 19 (both inclusive) of Act XXXV of 1858 shall be held to apply to persons or properties under the charge of the Court of Wards.

11. Whenever one or more of the joint proprietors of whose properties the Court of Wards has taken charge ceases to be subject to the jurisdiction of the Court of Wards, and the persons and properties of the remaining joint proprietors thereby cease to be subject to the jurisdiction of the Court of Wards, notwithstanding the otherwise continued disqualification of such remaining joint proprietors, the civil court which would have jurisdiction under Act XL of 1858 may, on the application of the Court of Wards, direct the Court of Wards to retain or resume charge of the persons and properties of the still disqualified proprietors during the continuance of their disqualification, or, subject to the provisions of section 12, for so long as such civil Court may order.

And in case any of the proprietors who have ceased to be subject to the jurisdiction of the Court of Wards so consent, the Court of Wards may retain or resume the charge of the properties of such proprietors, or any part thereof, so long as the property of any of the disqualified proprietors remains in charge of the Court of Wards.

12. The Court of Wards may at any time withdraw from the charge of any person and property taken under section 10 or under section 11, and from the charge of any person or property which before the commencement of this Act was placed under the charge of the Collector by a civil court under section 12, section 14, or section 21 of Act XL of 1858, or under section 11 of Act XXXV of 1858:

Provided that it shall give notice of its intention to withdraw to the civil court concerned, and that such notice shall be given not less than two months before the Court of Wards shall so withdraw.

13. Whenever, on the death of any ward, the succession to his property or any part thereof is in dispute, the Court may either direct that such property or part thereof be made over to any person claiming such property, or may retain charge of the same until the right to possession of the claimant has been determined under Bengal Act VII of 1876, or until the dispute has been determined by a competent civil court.

14. Subject to the provisions of this Act the Court—

(a) may, through its manager, do all such things requisite for the proper care and management of any property of which it may take or retain charge under this Act, or which may be placed under its charge by order of a competent civil court, as the proprietor of any such property, if not disqualified, might do for its care and management, and

(b) may, in respect of the person of any ward, do all such things as might be lawfully done by the legal guardian of such ward.

15. The Court may exercise all or any powers conferred on it by this Act through the Commissioners of the divisions and the Collectors of the districts in which any part of the property of the disqualified proprietor may be situated, or through any other person whom it may appoint for such purpose.

The Court may, with the sanction of the Lieutenant-Governor, from time to time delegate any of its powers to such Commissioners or Collectors or other person as aforesaid, and may at any time with the like sanction revoke such delegation.

26. "The Court may from time to time order such establishments to be entertained and expenses to be incurred, as it shall consider requisite for the care and management of the persons and properties under its charge, for superintendence, for the audit of accounts, and generally for all the purposes of this Act, and may order that such expenses, inclusive of all salaries, gratuities and payments on account of the leave allowances of such establishments be charged against any one or more properties for the purposes of which such establishments are, or have been, entertained or such expenses have been incurred." (*Act III B. C. of 1881.*)

17. "The Court may, in respect of such of the establishments and expenses referred to in the last preceding section as are in the judgment of the Court of a general nature, direct that they shall be met by a general contribution from the properties in charge of the Court, to be levied in such manner and in such proportion as the Court may from time to time direct. It shall be, and shall be deemed always to have been lawful, and charge against any fund to which such general contribution may from time to time be, or have been, credited, any salaries, gratuities, leave allowances, or pensions of officers and servants which the Lieutenant-Governor may order, or has already ordered, to be so charged." (Act III. B. C. of 1881.)

18. The Court may sanction the giving of leases or farms of the whole or part of any property under its charge, and may direct the mortgage or sale of any part of such property, and may direct the doing of all such other acts as it may judge to be most for the benefit of the property and the advantage of the ward.

19. If the Court thinks it expedient to direct the sale or mortgage of any part of an estate of which the ward is the sole proprietor, it may order the Collector to partition off such part into a separate estate, and the demand of land revenue and of the cesses for which the original estate was liable shall be assessed upon and divided between the two separate estates so formed, respectively, in such manner as the Court, with the sanction of the Lieutenant-Governor, may direct.

20. The Court may appoint one or more managers for the property of any ward, and one or more guardians for the care of the person of any ward under the charge of the Court, and may control and remove any manager or guardian so appointed.

On any disqualified proprietor becoming a ward, the Court may, at its discretion, confirm or refuse to recognize any appointment of a person to be guardian of such disqualified proprietor which may have been made by a will.

21. The Court may make such orders as to it may seem fit in respect of the custody, education, and residence of a minor ward, and such minor members of the ward's family as are under its charge, and in respect of the custody and residence of any ward, not being a minor, whose person is under the charge of the Court.

22. The Court shall allow, for the support of each ward and of his family, such monthly sum as it thinks fit (if any) with regard to the rank and circumstances of the parties.

PART III.

PROTECTION FROM SALE OF CERTAIN ESTATES.

23. "Clause 1.—Except as hereinafter provided by section 23 A, every estate, and subject to the provisions of section 14 of Act XI of 1939 every share or part of an estate for which a separate account has been opened under section 14 of Act XI of 1939, shall be exempt from sale."

State under charge of
Court exempt from sale.

10 or section 11 of the said Act or under section 70 of Bengal Act, VII of 1876, shall be exempt from sale for arrears of Government revenue which have accrued whilst such estate, share or part has been under the charge of the Court.

"Provided that all such arrears of revenue shall be the first charge upon the sale proceeds of any estate, share or part which may be sold for any other cause than for such arrears of revenue.

"Clause 2.—If at the time when such estate, share, or part ceases to be under the charge of the Court of Wards, or arrear of revenue is due on account thereof, the Collector may attach such estate, share or part, and collect the rent, cesses and other demands due, and all arrears thereof, managing such estate, share or part, either directly or through a manager, or by farming it for a period not exceeding five years, as he may think fit.

"Provided that when such estate, share or part has been attached under the provisions of this clause, the proceeds shall be paid to the Collector, and the Collector, after deducting the claims of Government for revenue and other public demands, together with any interest which has accrued upon such public demands other than Government revenue, and the charges of management, due up to the date of making such deduction, shall release such estate, share or part from attachment and pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, share or part, or to his duly constituted agent, and shall furnish such proprietor or agent with an account of the receipts and expenditure extending over the time when such estate, share or part was under attachment." (*Act III, B. C. of 1881.*)

23 A. "Notwithstanding anything in clause 5, section 8, Regulation I of 1793 or in section 23 of this Act contained, any estate, share or part of an estate, on which an arrear of revenue has accrued while under the charge of the Court, may at any time be sold under the provisions of the law for the time being in force for the recovery of arrears of Government revenue, if the Court has certified in writing that the interests of the ward require that such estate, share or part be so sold, and has stated in such writing the reasons upon which it has arrived at such conclusion." (*Act III, B. C. of 1881.*)

24. No estate, the sole property of a minor or of two or more minors, and descended to him or them by the regular course of inheritance, or by virtue of the will of, or some settlement made by, some deceased owner thereof, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until such minor or one of such minors completed his age of twenty-one years, but all arrears of revenue shall be the first charge upon the proceeds of such estate if the estate is sold for any other cause during such minority.

The Collector may, on an arrear so accruing on any such estate, attach the estate and collect the rents and all arrears of rent due, managing the estate either directly or through a manager or by farming it, as he may think fit, for a period not exceeding ten years, nor extending beyond the time when such minor or one of such minors completes his age of twenty-one years.

25. The exemption from sale for arrears of revenue given by section 24 shall only apply to cases in which a written notice of the fact that the estate is the sole property of one or more minors, and entitled to such exemption, has been served on the Collector before the sale.

26. When an estate has been farmed under the provisions of section 24, the proceeds of such farm shall be paid to the Collector, and the Collector, after deducting the amount of the claims of the Government for revenue and other public demands and the charges of management, shall either pay the proceeds to the person authorized to receive them for the proprietor, or shall dispose of them in any of the modes mentioned in section 49, or in section 60.

PART IV.

ASCERTAINMENT OF DISQUALIFICATION.

27. Whenever any Collector has reason to believe that any person residing in his district, or being the proprietor of an estate borne on the revenue-roll of his district, should be declared or adjudged to be a disqualified proprietor, under section 6, he shall make such enquiry as he may deem necessary, and if satisfied that such person should be so declared or adjudged, shall make a report of the same to the Court;

and the Court shall, on receipt of such report, make such order consistent with this Act as may seem to it expedient.

28. Nothing in section 27 shall prevent the Court or the local Government from putting the provisions of this Act in force without any report from the Collector.

29. Whenever any Collector receives information that the sole proprietor of an estate which is borne on the revenue-roll of his district has died,

or that the sole proprietor of any estate has died within his district,

and such Collector has reason to believe that the heirs of such proprietor should be declared or adjudged to be disqualified under section 6, he may take such steps and make such orders for the safety and preservation of the moveable property of such heirs, and of all deeds, documents, or papers relating to the property of such heirs, as to him may seem fit.

Such Collector may call upon any other Collector in whose jurisdiction any such moveable property, or any such deeds, documents, or papers may be, to take charge of the same, and thereupon such other Collector shall have the same powers with respect to such property, deeds, documents, and papers within his district as are conferred by this section on the first-mentioned Collector.

If the property is not afterwards taken under the charge of the Court, all expenses incurred by a Collector acting under this section shall be recoverable as arrears of revenue from the owner of such property or the person or persons whom the Collector shall find to be in possession of such property, and shall constitute a demand under Bengal Act, VII of 1868, or any similar law for the time being in force.

30. A Collector acting under the last preceding section may direct that any person who has the custody of a minor heir of any such deceased proprietor shall produce such minor before such Collector or before any other Collector on a day fixed, and the Collector before whom the minor is so produced may make such order for the temporary custody and protection of such minor as to him may seem fit.

If the minor is a female, she shall not be brought into the presence of the Collector, but the Collector may take such steps for her identification as he may think fit.

31. If a sole proprietor of an estate who does not reside within the local limits of the ordinary original civil jurisdiction of the High Court is reported by a Collector to be of unsound mind and incapable of managing his affairs, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply, in pursuance of the provisions of Act XXXV of 1868, to the civil court of the district within the jurisdiction of which such proprietor may reside.

32. If a sole proprietor of an estate who does not reside within the local limits of the ordinary original civil jurisdiction of the High Court is reported by

a Collector to be incapable of managing his property on the ground of some physical defect or infirmity other than unsoundness of mind, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply to the principal civil court of the district within which such person may be residing; and upon such Collector so applying, such civil court shall enquire into and determine the question as to the alleged incapacity.

33. If a sole proprietor of an estate who is resident within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal, or resident beyond the territories administered by the Lieutenant-Governor of Bengal, shall be reported by a Collector to be incapable of managing his property by reason of some physical defect or infirmity other than unsoundness of mind, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply to the principal civil court of the 24-Pergunnahs, or to such other civil court as the Lieutenant-Governor, on application made to him by the Collector in that behalf, may determine.

Such civil court shall thereupon enquire into and determine the question as to the alleged incapacity.

34. When any enquiry is instituted by a civil court under section 32 or section 33, such Court shall, for the purposes of making such enquiry, have the powers conferred, and proceed in the manner prescribed, by Act XXXV of 1858, with respect to the enquiries directed to be made by the said Act.

The civil court shall transmit to the Court of Wards a copy of the order made on each such enquiry, and the Court of Wards shall thereupon, in case the proprietor has been found by the civil court to be incapable as aforesaid, make such order consistent with this Act, as it shall think fit.

The civil Court shall have, with reference to proprietors who have been adjudged to be incapable as aforesaid, the same powers as are conferred on a civil court by section 21 of Act XXXV of 1858, with reference to persons adjudged to be of unsound mind and incapable of managing their affairs.

PART V.

PROCEDURE AFTER ASCERTAINMENT OF DISQUALIFICATION.

35. Whenever the Court has determined to take the person or property of a disqualified proprietor under its charge, whether in accordance with an order of the civil court or otherwise, the Court shall make an order declaring the fact and directing that possession be taken of such person and property or of such property on behalf of the Court, and the Court shall be held to be in charge of such property from the time when possession shall have been so taken.

36. As soon as conveniently may be after an order is made under the provisions of Section 35, the Collector of every district within which any part of the ward's property may be situated or some person authorized in writing by him in that behalf, shall take possession of all accounts, papers, and moveable property of the ward, and place under proper custody such portion thereof as he may think necessary.

Any such Collector, or some person authorized as aforesaid, may, in case he has reason to believe that any such account, paper, or property is in any room, box, or receptacle within any house in the actual possession of the ward, break open the same for the purpose of searching for such account, paper, or property.

37. Any such Collector may also order all persons in the employ of the ward or all persons who were in the employ of the deceased proprietor from whom the ward has derived his property, to attend before him,

and may order any person to deliver up any accounts, papers, or moveable property belonging to the ward; or any accounts or papers relating to the ward's property, which the Collector has reason to believe are in such person's possession,

and may order all holders of tenures and under-tenures on such property to produce their titles to such tenures and under-tenures.

PART VI.

MANAGEMENT AND GUARDIANSHIP.

38. If no manager of the property of a ward is appointed by the Court, the Collector of the district in which the greater part of such property is situated, or any other Collector whom the Court may appoint in that behalf, shall be competent to do under the orders of the Court anything that might be lawfully done by the manager of such property.

39. Every manager appointed by the Court shall have power to manage all property which may be committed to his charge, to collect the rents of the land entrusted to him, as well as all other money due to the ward, and to grant receipts therefor;

and may, under the orders of the Court, grant or renew such leases and farms as may be necessary for the good management of the property.

40. Every manager shall manage the property committed to him diligently and faithfully for the benefit of the proprietor, and shall in every respect act to the best of his judgment for the ward's interest as if the property were his own.

41. Every manager appointed by the Court shall—

(a) have the care of so much of the property of the ward as the Court may direct;

(b) give such security (if any) as the Court thinks fit to the Collector duly to account for all such property and for what he shall receive in respect of such property;

(c) continue liable to account to the Court, after he has ceased to be manager, for his receipts and disbursements during the period of his management;

(d) pay his accounts at such periods and in such form as the Court may direct;

(e) pay the balance due from him thereon;

(f) apply for the sanction of the Court to any act which may involve the property in expense not previously sanctioned by such Court;

(g) sign all papers, deeds, documents, and writings which may be executed by him by virtue of his office;

(h) be entitled to such allowance, to be paid out of the property, as the Court may think fit for his care and pains in the execution of his duties;

(i) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

42. A guardian appointed to the care of a ward shall be charged with the custody of the ward, and must look to his maintenance, health, and, if he be a minor, to his education.

43. Every guardian appointed by the Court shall—

(a) give such security (if any) as the Court thinks fit to the Collector for the due performance of his duty;

(b) pay his accounts at such periods and in such form as the Court may direct;

- (c) pay the balance due from him thereon;
- (d) continue liable to account to the Court, after he has ceased to be guardian, for his receipts and disbursements during the period of his guardianship;
- (e) apply for the sanction of the Court to any act which may involve expense not previously sanctioned by the Court;
- (f) be entitled to such allowance, to be paid out of the property of the ward, as the Court may think fit for his care and pains in the execution of his duties.

44. No person who would be the next legal heir of a ward, or would otherwise be immediately interested in outliving a ward, shall be appointed to be his guardian;

but nothing in this section shall apply to the mother of a ward, or to a testamentary guardian.

45. If the ward is a female, a female of the same religion shall, except in the case of a testamentary guardian, be appointed guardian, preference being given to female relatives if any such be eligible.

But no guardian shall ordinarily be appointed or continued for a female ward if she has an adult husband.

46. Every sum due to the Court from a manager or guardian, or from the sureties of a manager or guardian, or from any officer or servant employed under the Court, or from the sureties of any such officer or servant, shall be recoverable as a demand under Bengal Act, VII of 1868, or any similar law for the time being in force.

47. The Court may order any past or present manager or guardian, or past or present officer subordinate to a manager or guardian, to deliver up his accounts or any property which may be in his possession within such time as may be fixed by the Court.

48. "All monies received by the manager shall be applied to the purposes hereinafter mentioned in accordance with such instructions as the Court may from time to time give in that behalf. Unless the Board of Revenue shall specially otherwise direct, priority shall be given to the purposes included under class I over those included in class II, and priority shall be given to the purposes included in class II over those included in class III.

Application of monies received by manager.

"CLASS I.

The payment of all charges necessary for the maintenance, education and religious observances of the ward, and his family, for the management and supervision of the property of the ward

and the discharge of the instalments of Government revenue and of all cesses and other public demands from time to time due in respect of such property or any part of such property.

"CLASS II.

The payment of all rents, cesses, and other demands due to any superior landlords in respect of any land held on behalf of the ward,

the liquidation of debts payable by the ward; the payment of all expenses which may be necessary to protect the interests of the ward in the civil Courts, or otherwise,

the maintenance in an efficient condition of the estates, buildings and other immoveable property belonging to the ward and

the payment of such religious, charitable and other allowances as were paid out of the proceeds of the property before it came under the charge of the Court, and such allowances and donations befitting the position of the ward's family as the Court may authorize to be paid.

"CLASS III.

The improvement of the land and property of the ward, and the benefit of the ward of his property generally.

"Provided that the amount expended for such improvement and benefit in any one year shall not exceed ten per centum of the surplus which the accounts of the previous year may show to have been available after paying or making provision for the payment of all expenses incurred up to the end of such previous year, unless, in the opinion of the Court and the Lieutenant-Governor, it is desirable for the protection or in the interests of the ward or his property to expend an amount exceeding such percentage." (*Act III, B. O. of 1881*).

49. "If the ward is a female of sound mind, who has completed her age of twenty-one years, or a male who has completed his age of twenty-one years, whose property remains under the charge of the Court with his consent under section 14, no part of the surplus mentioned in the proviso to the section immediately preceding shall be expended by the Court otherwise than in the liquidation of debts or in the improvement of the lands or property as aforesaid.

Any portion of such surplus remaining after provision has been made for such purposes, shall be paid to such ward.

"Provided that before paying any portion of such surplus to such ward, the Court may deduct therefrom and retain at its disposal any sums which it may consider necessary to retain—

(1.) "As a working balance for the management of the property and expenses incidental thereto;

(2.) "In order to make provision for any special charges which are expected to become payable on account of the property, and which probably cannot be met from the expected surplus of the following year." (*Act III of 1881, B. O.*)

50. "If the ward is not a female or male as aforesaid, and if any surplus remains after providing so far as the Court may think fit for the objects mentioned in section 48, the same shall be applied in the purchase of other landed property, or invested at interest on the security of—

Promissory notes, debentures, stock, and other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;

bonds, debentures, and annuities charged by the Imperial Parliament on the revenues of India;

stock or debentures of or shares in railway or other companies, the interest whereon has been guaranteed by the Secretary of State for India in Council;

debentures or other securities for money paid by or on behalf of any municipal body under the authority of any Act of a legislature established in British India;

or such other securities, stocks, or shares, guaranteed by the Government of India or the Government of Bengal as to the Court shall seem fit.

PART VII.

Suits.

51. In every suit brought by or against any ward he shall be therein described as a Ward of Court and the manager of such ward's property, or if

there is no manager, the Collector* of the district in which the greater part of such property is situated, or any other Collector whom the Court of Wards may appoint in that behalf, shall be named as next friend or guardian for the suit, and shall in such suit represent such ward, and no other person shall be ordered to sue or be sued as next friend or be named as guardian for the suit by any civil court in which such suit may be pending.

52. The Court of Wards may by an order nominate or substitute any other person to be next friend or guardian for any such suit; and upon receiving a copy of any such order of substitution, the civil court in which such suit is pending shall substitute the name of the next friend or guardian for the suit so appointed for the name of the manager or Collector.

53. If in any such suit any civil court shall decree any costs against the next friend or guardian for the suit of the ward, the Court of Wards shall cause such costs to be paid out of any property of the ward which for the time being may be in its hands.

54. Every process which may be issued out of any civil court against any ward shall be served, through the Collector, upon the next friend or guardian for the suit as aforesaid of such ward.

55. No suit shall be brought on behalf of any ward "by a manager," unless the same be authorized by some order of the Court:

Provided that a manager may authorize a plaint to be filed in order to prevent a suit from being barred by the law of limitation, but such suit shall not be afterwards proceeded with except under the sanction of the Court:

Provided also that suits for arrears of rent may be brought on behalf of any ward if authorized by an order of the manager of the landed property on which such rents are due.

56. Nothing contained in this part shall apply to any suit instituted or pending in the High Court, or to a proprietor who has consented to leave his property under the charge of the Court of Wards, as provided in the second clause of section 11.

PART VIII.

PENALTIES.

57. Any person who refuses to comply with an order of a Collector under sections 29, 30, 36, or 37, shall be liable, by order of the Collector, to a fine not exceeding five hundred rupees.

58. Any person who refuses to comply with an order made under section 47 may be punished, by order of the Court, with simple imprisonment and attachment of his property until the order is complied with.

"Provided that the Collector may release any person who has been so imprisoned on his furnishing sufficient security for his attendance and for the delivery of the accounts or property required within such time as the Collector shall think fit. The Collector may at any time rescind such order of release and direct that effect shall be given to the previous imprisonment." (*Act III, B. C. of 1881*).

58 A. "Any farmer holding or having held lands under the Court who, upon notice served upon him to that effect at any time during the currency of the lease or within six months after the expiry of the lease under which such lands were held or after he has relinquished such lands, omits or refuses to furnish accounts or produce documents or papers required under such notice, and shall not show sufficient cause for such omission or refusal shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees, for

such omission, and the Collector may impose such further daily fine as he may think proper, not exceeding twenty rupees for each day during which such farmer shall omit to furnish the accounts, documents or papers required after a date to be fixed by the Collector in a notice warning the farmer that such further daily fine will be imposed.

"Such notice shall be served by tendering to the person to whom it may be directed a copy thereof, attested by the Collector, or by delivering such copy at the usual place of abode of such person or to some adult male member of his family; or in case it cannot be so served, by posting some copy upon such conspicuous part of the usual or last known place of abode of such person, and in case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such a way as the Collector issuing the notice may direct, and the date fixed by such notice shall not be less than fifteen days after service thereof.

The Collector may proceed from time to time to levy any amount which has become due in respect of any fine imposed under this section, notwithstanding that an appeal against the order imposing such fine may be pending.

"Provided that whenever the amount levied under such order shall have exceeded five hundred Rupees, the Collector shall report the case specially to the Commissioner of the Division and no further levy in respect of such fine shall be made otherwise than by the authority of the said Commissioner." (*Act III, B. C. of 1881*).

59. Any person who disobeys any lawful order of the Court shall be liable, on conviction before a Magistrate, to a fine not exceeding five hundred rupees, and if he is a manager or guardian appointed by the Court, to a fine not exceeding one thousand rupees.

PART IX.

MISCELLANEOUS.

60. No ward shall be competent to create, without the sanction of the Court, any charge upon, or interest in, his property or any part thereof.

61. No adoption by any ward, and no written or verbal permission to adopt given by any ward, shall be valid without the consent of the Lieutenant-Governor, obtained either previously or subsequently to such adoption, or to the giving of such permission, on application made to him through the Court.

62. Nothing contained in section 60 or in section 61 shall apply to a proprietor who has consented to leave his property under the charge of the Court, as provided in the second clause of section 11.

63. "Any amount of interest which has accrued due on arrears of rent or other demand recoverable as rent payable to the manager of an estate which is in charge of the Court, may be recovered in any manner and by any process according to which such arrears may be recovered under any law for the time being in force, and any Court or officer who is competent to make an order or certificate in execution of which such arrears or other demand are recoverable, may direct that any costs incurred by the manager in obtaining such order or certificate, and in executing the same shall be recovered in the same manner and in the same process as if the amount thereof had been included in the said order or certificate." (*Act III, B. C. of 1881*).

64. When any penalty is imposed by any order under section 57 or section 58, the Collector or Court passing such order shall make a formal record of the same with the reasons or grounds thereof.

65. Whenever the Court has determined to release the property of a ward from its charge, it shall make an order that the jurisdiction of the Court over such property shall cease on a date not more than sixty and not less than fifteen days from the date of such order; and copies of such order shall be published as the Court may direct.

65 A. "Any expense incurred by the Court on account of any property under its charge may, after the release of such property be recovered as a demand under Bengal Act, VII of 1880, or any other Act, at the time being in force for the recovery of public demands from any person into whose possession such property or any part thereof may have passed immediately after the release by the Court of such property: Provided that the sum so recovered from any such person shall not be greater than the value of any such property which so passed into the possession of such person." (*Act III, B. C. of 1881.*)

66. A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure on a civil court for the trial of suits.

67. An appeal shall lie from every order of a Collector under this Act to the Commissioner of the division, and from every order of a Commissioner under this Act to the Court.

68. All orders or proceedings of the Commissioner and of the Collector under this Act shall be subject to the supervision and control of the Court, and the Court may, if it thinks fit, revise, modify, or reverse any such order or proceeding whether an appeal is presented against such order or proceeding or otherwise.

69. In the exercise of the powers and in the discharge of the duties conferred and imposed respectively on the Court by this Act, the Court shall be guided by such orders and instructions as it may from time to time receive from the Lieutenant-Governor.

70. The Court may make rules consistent with this Act—

- (a) defining the powers of Commissioners and Collectors respectively when the property of a ward is situated in two or more districts or in two or more divisions;
 - (b) prescribing what reports shall be made from time to time by Collectors and Commissioners on the condition of the ward and his property;
 - (c) prescribing the periods at which, and the mode in which, accounts shall be submitted by managers and guardians respectively, and the mode in which such accounts shall be audited;
 - (d) regulating the custody of securities and title-deeds belonging to the estate or property of a ward;
 - (e) regulating the procedure in appeals from orders of Collectors and Commissioners respectively under this Act;
 - (f) prescribing the procedure to be observed when a property ceases to be under the charge of the Court;
 - (g) and generally, for the better fulfilment of the purposes of this Act.
- The Court may from time to time alter, add to, or repeal such rules.

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